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THE

STUDENT'S GUIDE

TO

CONSTITUTIONAL LAW

AND

LEGAL HISTORY.

BY

CHARLES THWAITES, SOLICITOR,

First in First Class Honours, June, 1880; *Sheffield District Prizeman*, 1880; *Reardon (Yearly) Prizeman*, 1880; *Scott Scholar*, 1880; *and Conveyancing Gold Medallist*, 1880;

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"THE STUDENT'S GUIDE TO THE PRINCIPLES OF EQUITY," &c., &c.

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ADVERTISEMENT TO FOURTH EDITION.

THIS little work forms one of a series of six Guides to the Bar Final. The others are—on Real and Personal Property, fifth edition, by Messrs. Indermaur and Thwaites; on Criminal Law, sixth edition, by Mr. Thwaites; on Common Law, fifth edition, by Mr. Thwaites; on Procedure and Evidence, third edition, by Messrs. Indermaur and Thwaites; and on the Principles of Equity, second edition, by Messrs. Indermaur and Thwaites. The first edition of this work was published in December, 1894, the second in November, 1896, and the third in December, 1900. It would, therefore, seem that the book has been found—as was hoped would be the case—of use by the class for whom it was written. Though particularly intended for Bar Students, it may, perhaps, be found of some service to Undergraduates as well.

This edition has been carefully revised and amplified, and it is believed that it will be found fairly complete, as regards Constitutional Law and History; but the topic of Legal History is so wide that it is manifest it cannot be exhaustively treated in a Guide of this kind.

22, CHANCERY LANE, LONDON,
September, 1905.

Mr. Thwaites continues to prepare Students in class, privately, and by post, for the Bar Final Examination, Solicitors' Final (Pass and Honours) Examinations, and Solicitors' Intermediate Examination. Particulars may be had on application, personally or by letter, to Mr. Thwaites, at his Chambers, 22, Chancery Lane, London, W.C.

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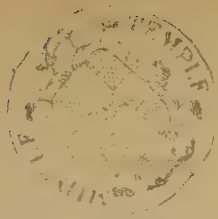

THE STUDENT'S GUIDE

TO

CONSTITUTIONAL LAW AND LEGAL HISTORY.

I.—INTRODUCTORY.

Constitutional Law and History (both English and Colonial), and Legal History, have formed the subject of lectures and classes held for Bar Students, under the auspices of the Council of Legal Education, since Hilary Term, 1892. An optional paper was set on these subjects at the Bar Examinations during 1892 and 1893. Since 1893 these topics have been prescribed for one of the compulsory papers which must be passed before call to the Bar.

There is no exemption from the examination in Constitutional Law and Legal History. But the Bar Student can now take the paper on these topics separately from all others, or with the Roman Law and (or) Evidence, Procedure and Criminal Law papers; and he may do this at any time after admission as a student, though he may not take the four other papers which constitute the Final Examination until he has kept six terms.

The examination consists, at present, of a paper of ten questions, and of *vivâ voce* questions at discretion. All questions are set upon the subjects treated of in the lectures and classes for two years before the examination.

Taking the syllabus of lectures and classes, we find that the subjects dealt with in the last two years may be summarized as follows, the course having been gone through twice :—

Legal History.

The Rise of Law. Self Help. The Blood Feud. The Composition for Blood. The King and his Intervention. Crime and Tort.

The Elements in English Law. Anglo-Saxon Law. Frankish Law. The Civil and Canon Law.

Local and Feudal Jurisdictions. Local Customs and the Custom of the King's Court. The Supremacy of Royal Justice. The King's Writ.

The *Curia Regis*. The King in Council. The King in Parliament. The Chancellor. The Exchequer. The Eyre and the Itinerant Justices. The Courts of Common Law. Civil Procedure. The Proprietary Actions. The Possessory Actions. Tort. Contract. The Assize and the Jurata. Criminal Law. Ordeal. Battle. The Halifax Gibbet. The Oath Helpers. The Jury. Consent to Jurisdiction.

Residuary Royal Powers. The System of Equity. The Subpœna. The Star Chamber. The Council of the North. The High Commission.

The House of Lords and Privy Council. The Judicature Act. The Existing System.

Some Eminent Judges.

Custom in Early Societies. Its Relation to Law. The Royal Function. The Custom of the King's Court. The Law of the Land and the Law of the Sea. The Law Merchant. The Law Ecclesiastical. The Law of Nature. The Common Law and the Doctrines of Equity. The Residuary Royal Power. The Central Court and the Local Courts. Ordinary and Extraordinary Jurisdictions. The Development of the English Judicial System.

Certain Points in the History of Real Property Law, and in the Development of Substantive Law.

Constitutional Law.

The Province of Constitutional Law. The Law and Custom of the Constitution. Written and Unwritten, Flexible and Rigid Constitutions.

The Sovereignty of Parliament.

Lex et Consuetudo Parliamenti. The Crown and the Parliament. The Duration of Parliaments.

Parliament and Elections. Disqualifications for Membership. The Franchise.

The Privileges of Parliament. Conflicts with the Courts. Leading Cases.

The House of Lords. Characteristics of Peerage. Creation of Peers. Life Peerages. Privileges. Conflicts with House of Commons.

Parliamentary Procedure. Public Bills. Money Bills. Private Bills. The Cabinet and the House of Commons. Parliamentary Control.

The Rule of Law. Personal Liberty and Security. Remedies for Infringement of. *Habeas Corpus.*

Offences against Public Order. Treason. Treason Felony. Unlawful Assembly. Conspiracy. Riot. The Riot Act. Martial Law.

Freedom of Speech and of the Press. Historical Summary. The Libel Acts. Seditious and Blasphemous Libels.

The Crown and its Officers, and their Liability. Acts of State.

The Crown.

The Title to the Crown. Allegiance. Naturalization. The Naturalization Act. Crown Property and the Civil List. The Royal Family.

The Prerogative. Historical Retrospect. Limitations and Manner of Exercise.

The Councils of the Crown. The Cabinet System.

The Prime Minister and the Cabinet. Their Relations to the Crown, to Parliament, and to the Constituencies.

The Ministers of the Crown and their Departments. The Prerogative with regard to War, Peace, and Treaties.

Taxation. Leading Cases and Statutes. Annual and Permanent Taxes. The Receipt and Expenditure of the Revenue. Parliamentary Control.

The Established Church.

The Naval and Military Forces. Martial Law. The Army Discipline Act.

The Civil Service.

Foreign Relations.

The Law relating to the Colonies. Classification of Colonies. The Law of the Colony. The Executive. The Governor, the nature of his Office and his Relation to the Crown. The Colony and the Imperial Parliament. The Colony and the Privy Council. Statutes. Leading Cases.

Constitutional History.

The Early History of the Constitution; from the Conquest to the Tudors; from Henry VII. to James I.; from James I. to the Revolution; from 1688 to the present time.

The books recommended by the Reader are as follows:—

1.—Constitutional Law—

Dicey's Law of the Constitution (463 pages).
Anson's Law and Custom of the Constitution (2 volumes of 374 and 498 pages).
Broom's Constitution Law (983 pages).
May's Law and Practice of Parliament (821 pages).
Bagehot's English Constitution, and
Hearn's Government of England (569 pages).

2.—Legal History—

Parts of Blackstone, Spence, Stephen's History of Criminal Law, Maitland's Introductions to Volumes I. and II. of the Selden Society Publications, and Carter's Legal History.

3.—Constitutional History—

Stubbs (3 volumes of 682, 656, and 638 pages).
Hallam (3 volumes of 419, 465, and 404 pages).
Gardner.
May (3 volumes of 459, 420, and 454 small pages).
Taswell-Langmead (644 pages).

The student, therefore, has before him, so far, the prospect of a series of lectures which he may or may not be able to attend, and a list of books which is enough to frighten even the most industrious, and which is only possible for very few. Those who are prepared to grapple with all this will hardly need this Guide, though perhaps even in such case they may find it of some service to assist in checking knowledge. The object of this Guide is to assist the ordinary student and point out what may be sufficient for him. In doing this, however, there is no wish to deter him from further extending his course of studies, and certainly all who desire to make a speciality of Constitutional Law and Legal History will do so. If students are able to go through the course of lectures, they must prove of service; still many, of course, cannot or will not do so. I will now proceed to give some reasonable advice on the course of reading.

II.—THE COURSE OF READING.

An industrious student of Constitutional Law may well read Dicey, Anson, and Broom; and on Constitutional History he should read Taswell-Langmead, or at the least Fielden's History. As regards Legal History, that is a very wide head, on which he will find much in the books just mentioned, and also in the works which he must read for his other papers at the Bar Final. However, three small books on this subject have been published, viz.: (1) Outlines of Legal History, by Archer M. White; (2) The Student's Legal History, by R. Storry Deans; and (3) Outlines of Legal History, by A. T. Carter. All students are advised to read the two latter works.

A student with less time at his disposal may omit Broom; but Dicey, Anson, Taswell-Langmead (or Fielden), Carter, and Storry Deans ought, if possible, to be read by all.

If, however, a student feels these three works are more than he can fairly manage, he should read Dicey and Anson, or Taswell-Langmead, or Fielden, according to his wishes—no doubt Anson for preference, with Carter and Storry Deans.

But if time does not permit even of this, there should be, at all events, a careful study of Dicey and the following parts of Anson:—

Vol. I.—Parliament.

Chapter 3.—The Meeting of Parliament.
,, 5.—The House of Commons, particularly Section 4 on the Privileges of the House of Commons.
,, 6.—The Process of Legislation.
,, 8.—The Executive and Legislature in conflict.
,, 10.—The High Court of Parliament.

VOL. II.—THE CROWN.

Chapter 1.—Prerogative of the Crown.
,, 3.—The Councils of the Crown.
,. 5.—Sections 1 and 3.
,, 7.—Revenues of the Crown and their Expenditure.
,, 9.—The Crown and the Churches.
,, 10.—The Crown and the Courts.

It is not safe to take Dicey as the sole text-book, but coupled with the assistance given in this Guide, and with the lectures, or the aid of a "coach," even this may perhaps do. But all will find a careful study of Dicey helpful as a groundwork on which to accumulate further knowledge; and to facilitate and encourage that study a set of Test Questions is given on that work, and the student is advised to examine himself on them as he progresses with the book, and again when he has finished. If time permits of the writing out of Answers to these Questions, or to some of them, that also will be well.

Dicey, then, coupled with the set of Test Questions thereon, is meant to be the first step in the study of Constitutional Law; but Dicey is not enough by itself, and Anson should also be read. As to Constitutional History, there is no book to compare with Taswell-Langmead, though Fielden is certainly a very fair epitome. As regards Legal History, that is just now a pronounced feature of the examination, and although the student may prefer to rely on what he gleans from other works, he will do best to read the two books by Mr. Carter and Mr. Storry Deans. Anyhow, finally should come a thorough and earnest study of the Digest of Questions and Answers which is given in this Guide. This Digest has been prepared with very considerable thought and care, and, wide as the subject is, it is believed that it will be found fairly comprehensive. It is a selected digest of all the Questions and Answers hitherto set at the Bar Final, supplemented by Questions and

Answers at other examinations on the same subjects, and some original ones. It has been very carefully revised and considerably added to in this edition, and a thorough mastery of it is strongly recommended. Beyond studying it the student in some places must not hesitate to look up the authorities referred to, and thus enlarge and amplify his knowledge.

By following out even the very modified course of reading that is here advised, I have every confidence that success will attend the student at his examination.

It is well that a student should be able to refer to the different epochs without trouble, and I have, therefore, given a chronological list of the Rulers of England since the Conquest.

Thomas' Leading Cases in Constitutional Law will be found a useful little book, particularly for the student who cannot find time for Broom, or wishes to supplement that work.

Holdsworth's History of English Law is a very useful book for reference on points, volume one was published in 1903.

Ridge's Constitutional Law of England, published in 1905, is a work which might be used instead of Anson.

III.—TEST QUESTIONS ON DICEY'S LAW OF THE CONSTITUTION.

(The references after each Question refer to the pages of Dicey (Sixth Edition) where the Answers can be found.)

INTRODUCTION.

1. Explain the meaning of the term "Constitutional Law" as the term is used in England. Of what two Elements does our Constitutional Law consist? (22-24.)

2. Discuss and explain the maxim, "The King can do no wrong." (24.)

3. Give some examples of rules which belong to conventions of the Constitution, rather than to direct laws. (25, 26.)

4. In what material particulars does the distinction between laws and conventions differ from the distinction between written and unwritten law? (27.)

5. In considering and enquiring into Constitutional Law, what are stated by Mr. Dicey to be the three guiding principles that gradually become apparent? (33, 34.)

PART I.

Chapter I.

6. What do you understand by the principle of Parliamentary Sovereignty? (38.)

7. State briefly the effect of Blackstone's remarks on the unlimited legislative authority of Parliament. (39.)

8. When, and by what authority, was the descent of

the Crown varied and finally settled? On what authority does the King's right to reign depend? (41.)

9. When was the Septennial Act passed? Discuss briefly the circumstances under which it was passed, pointing out the true grounds of the objections urged against it. (42-45.)

10. Enumerate four cases of Parliamentary interference with private rights which furnish prominent instances of the great authority of Parliament. (46.)

11. What do you understand by an Act of Indemnity? Give an example of such an Act of Parliament. (47.)

12. In whom did legislative authority originally reside? What was meant by Ordinances and Proclamations respectively? (48.)

13. What was provided by the Statute of Proclamations passed in 1539? When was this Statute abolished? Point out a few of the revolutionary results that would have ensued had it remained in force. What may be considered as the final Legislative disposal of any claim on the part of the Crown to make laws by force of Proclamation? (48-51.)

14. Does the House of Commons possess any right to make laws by means of Resolutions? In connection with the exact effect of such resolutions, what two points may be considered as well established at the present day? (52.)

15. What is the extent of the authority of either House of Parliament to commit for contempt? Discuss shortly the case of the Sheriff of Middlesex. (54, 55, 56 *note*.)

16. Explain the controversy connected with the case of Stockdale v. Hansard. What was the object of the statute 3 & 4 Vict., c. 9? (52-55.)

17. Discuss and explain the legal right of electors under the English Constitution. (57.)

18. Explain the phrase "Judicial Legislation." Is it subordinate to, or above the powers of, Parliament? (58.)

19. What three legal limitations have been alleged to exist on the legislative sovereignty of Parliament? (59-62.)

20. Is it open to Parliament to make laws binding on subsequent Parliaments? Illustrate your answer by reference to the Irish Church Act 1869. (62-64.)

21. Has Parliament any right to impose taxes on the Colonies? (64, 65.)

22. How may a sovereign power divest itself of authority? (66*n*.)

23. Discuss Austin's theory of sovereignty in relation to the British Constitution. (68-71.)

24. Is it correct to state that Parliament is in any legal sense a "trustee" for the electors? (72.)

25. Give some examples to show the extent to which the theoretically boundless sovereignty of Parliament is curtailed by the external limit to its exercise. (74-77.)

26. What do you understand by the statement that there is an internal limit to the exercise of sovereignty? (76-78.)

27. What may be stated to be the only certain effect of *bonâ fide* representative government? (80.)

Chapter II.

28. Are fundamental or so-called constitutional laws capable of being changed in any, and if so, in what manner? (84-87.)

29. What may be said to be the three traits of Parliament sovereignty as it exists in England? (87.)

30. What do you understand by a non-sovereign law-making body? Mention some of the marks of such a body. (87-90.)

31. Describe the nature of the powers possessed by a

railway company or other corporation as regards the making of bye-laws. What are the functions of the Courts in considering any such bye-laws? (90-94.)

32. How is British India governed? Is this Government in any way of a subordinate nature? Illustrate your answer by reference to the case of Empress v. Burah. (95-98.)

33. Discuss the constitution of Victoria. (98-109.)

34. How does the Colonial Laws Validity Act 1865 permanently define and extend the authority of Colonial legislatures? (101-103.)

35. On what authority does the constitution of our Colonies directly or indirectly depend? Can a Statute of the Imperial Parliament bind the Colonies? (110.)

36. To what real veto is Colonial Legislation subject? (111-115.) What is the tendency of the Imperial Government with regard to interfering with the action of the Colonies? (116.)

37. Why is it correct to say that the Parliaments of any of the Colonies are not in reality sovereign legislatures? (116.)

38. Explain and illustrate the distinctions between a "flexible" and a "rigid" Constitution. What is the nature of our own Constitution in this respect? (122-132.)

Chapter III.

39. Illustrate the nature of Parliamentary Sovereignty as it exists in England, by a comparison with the system of Federalism as it exists in the United States of America, and some other places. (134-176.)

40. Explain the terms "Unitarianism" and "Federalism." (135, 136.)

41. What are the two conditions which a Federal State

requires for its formation? What is the aim of federalism? (136-139.)

42. What may be said to be the three leading characteristics of federalism? (140.)

43. Discuss the Constitution of the Dominion of Canada and compare it with the Swiss Federation. (161-166.)

44. Discuss and explain the statement "Federal Government means weak Government." (167-169.)

45. Discuss and explain the statement "Federalism tends to produce Conservatism." (169, 170.)

46. Discuss and explain the statement "Federalism means Legalism." (170-176.)

PART II.

Chapter IV.

47. What two features have at all times since the Norman Conquest characterised the political institutions of England? (179.)

48. What three distinct, though kindred conceptions, are included under the statement that the supremacy of the rule of law is a characteristic of the English Constitution? (183, 189, 191.)

49. What three meanings has, or from what three different points of view may be regarded, the "Rule of Law" which forms a fundamental principle of our Constitution? (198, 199.)

Chapter V.

50. Explain the basis upon which the security for

personal freedom which an Englishman enjoys depends. Give the effect of the 39th Article of Magna Charta. (202.)

51. What security does the law afford that every one who, without legal justification, is placed in confinement shall be able to get free? (204.)

52. What two maxims underlie the whole law of the Constitution? (206, 207.)

53. Explain briefly the nature or character of a writ of Habeas Corpus. On whose application can such a writ be issued, and is it granted as a matter of right? (209-211.)

54. Was there any right to the writ of Habeas Corpus at Common Law? What was the aim of the Habeas Corpus Acts? (212-217.)

55. Show, by reference to the Case of the Canadian Prisoners and *Re* Allen, the mode in which the Courts can, and do, by means of the writ of Habeas Corpus, keep a hold on the acts of the executive. (217, 218.)

56. What is the reason for the passing in recent times of the Extradition Acts? (220, 221.)

57. Explain the nature and effect of an Act passed for the suspension of the Habeas Corpus Acts. Give an illustration of such an Act. (224-228.)

58. What do you understand by an "Indemnity Act," and under what circumstances would such an Act be passed? Give an example of such an Act. (228-233.)

Chapter VI.

59. State briefly the present law of England with regard to a person's right to say, write, or publish whatever he pleases. (236.)

60. Enumerate some of the restrictions imposed by the Law of Libel on the freedom of the Press. (237-239.)

61. What do you understand by "seditious libel"? (240.)

62. With what two features is the present position of the English Press marked? (243-248.)

63. Compare shortly the position of the law of England and the law of France, with regard to the Press. (248-255.)

64. What was the condition of the English Press in the 16th and 17th centuries? (255-260.)

Chapter VII.

65. Explain the principle of English law as to the right of public meeting. Illustrate your answer by reference to the case of Beatty v. Gillbanks. State the two limitations on this principle. (266-276.)

66. A public meeting is announced to take place, and a proclamation is issued from the Home Office forbidding the meeting to be held. Does this render the meeting illegal? (277, 278.)

Chapter VIII.

67. It is stated that the means by which the Courts have maintained the law of the Constitution have been the strict insistance upon two principles. What are the two principles referred to? (282, 283.)

68. What do you understand by martial law in the proper sense of the term? Is there any such law in England? (283.)

69. State shortly the provisions of the Riot Act. Is it legal to employ the military without the fulfilment of the conditions imposed by that statute? (286.)

70. State shortly the facts and decision in Wolfe Tone's Case. (289.)

Chapter IX.

71. Of what does the English Army consist? What objections may be urged against a standing army? (291.)

72. What was the object, and what were the principles, of the first Mutiny Act, passed in 1689? Give the effect of the preamble to that statute. (294, 295.)

73. What persons are subject to martial law? Is a soldier, if a member of the standing army, subject to the duties and liabilities of an ordinary citizen? (295-297.)

74. If a soldier is acquitted or convicted of an offence by a competent Civil Court, can he afterwards be tried for the same offence by a Court Martial? If he is first tried by a Court Martial and acquitted, or convicted, can he afterwards be indicted? (297.)

75. Discuss the point as to whether a soldier who is put on trial on a charge of crime is absolutely protected by the fact that he acted strictly in obedience to superior orders. (297-301.)

76. Explain how the Civil jurisdiction of the Courts of Law is exercised as against the tribunal of a Court Martial. Assuming that the Mutiny Act was not in force, what would be the effect of a soldier deserting, or assaulting an officer? (302-304.)

77. What do you understand by the Militia, and how are the Militia raised? Are members of the Militia subject to military law? (304, 305.)

Chapter X.

78. Explain the sources of public revenue. Could any money be legally levied if Parliament ceased to meet? (306-309.)

79. Under what authority can the revenue of this country be legally expended? What special security exists for the proper appropriation of the revenue? (309-318.)

Chapter XI.

80. Explain the phrase "Ministerial Responsibility." (319.)

81. If a minister or servant of the Crown does an illegal act in obedience to Royal orders, does he incur any personal liability with regard to the same? (319-321.)

Chapter XII.

82. What do you understand by "droit administratif?" What are the two leading ideas on which it rests which are alien to the conceptions of modern Englishmen? (325-328.)

83. What are the four leading characteristics of French administrative law? (329-333.)

84. Contrast the position of French officials under "droit administratif" with the situation of servants of the Crown in England. (341.)

Chapter XIII.

85. What are the two principles which may be said to pervade the whole of the English Constitution? (350.)

86. Do our Courts take any notice of (*a*) resolutions of Parliament, (*b*) anything which may pass in debate, or (*c*) changes which a Bill has undergone in passing through Parliament? (351.)

87. Are our judges entirely independent of Parliament? or has Parliament any power to remove them from their offices? (353.)

88. Has the Crown any power to expel from England an alien, or to deliver up a foreign criminal to the foreign State where the crime was committed? (355, 356.)

PART III.

Chapter XIV.

89. Define and explain the nature of the Conventions of the Constitution. Give illustrations. (361-382.)

90. What do you understand by the "prerogative"? (368.)

91. Explain the difference between "legal" sovereignty and "political" sovereignty. (373.)

92. Under what circumstances is a dissolution of Parliament said to be constitutional? (376-382.)

Chapter XV.

93. Discuss the different ways in which it has been stated or suggested that obedience to the conventions to the Constitution can be enforced. (383-390.)

94. It is a convention of the Constitution that Parliament must assemble at least once a year. Explain how this rule is capable of practical enforcement. (390-392.)

95. Explain why the process of impeachment has gone out of use. (398.)

96. Point out the way in which the survival of the prerogative affects the position of the Cabinet. Illustrate

your answer by reference to the manner in which the system of purchase in the army was abolished in 1872. (407-413.)

APPENDIX.

97. Compare the divisions of powers in the United States, Swiss Federation, Canadian Dominion, Commonwealth of Australia, and German Empire. (424-428.)

98. Discuss the distinctions between a parliamentary, and a non-parliamentary, executive, with examples. (428-436.)

99. What limits does the law place on the right of self-defence? Deal with the following cases: (1) a farmer shoots a trespasser gathering mushrooms in his fields, (2) a person draws a knife and stabs a stranger who assaults him, (3) a householder shoots a burglar. (437-445.)

100. What is an unlawful assembly? (449.) What are the duties of soldiers in dispersing the same? (460.)

101. State and discuss shortly the four main features of the Constitution of the Commonwealth of Australia. (477-485.)

102. What four propositions are deducible from the nature of martial law? (509-513.)

IV.—CHRONOLOGICAL LIST OF THE RULERS OF ENGLAND SINCE 1066.

Name.		Accsn.	Died.	Age	Rgnd.
	THE HOUSE OF NORMANDY.				
WILLIAM I.	Obtained the Crown by Conquest	1066	1087	60	21
WILLIAM II.	Third son of William I.	1087	1100	40	13
HENRY I.	Youngest son of William I.	1100	1135	67	35
STEPHEN	Third son of Stephen, Count of Blois, by Adela, fourth daughter of William I.	1135	1154	60	19
	THE HOUSE OF PLANTAGENET.				
HENRY II.	Son of Geoffrey Plantagenet, by Matilda only daughter of Henry I.	1154	1189	56	35
RICHARD I.	Eldest surviving son of Henry II.	1189	1199	42	10
JOHN	Sixth and youngest son of Henry II.	1199	1216	49	17
HENRY III.	Eldest son of John	1216	1272	65	56
EDWARD I.	Eldest son of Henry III.	1272	1307	68	35
EDWARD II.	Eldest surviving son of Edward I.	1307	Dep. 1327	43	20
EDWARD III.	Eldest son of Edward II.	1327	1377	65	50
RICHARD II.	Son of the Black Prince, eld. son of Ed. III.	1377	Dep. 1399	34	22
	THE HOUSE OF LANCASTER.				
HENRY IV.	Son of John of Gaunt, fourth son of Ed. III.	1399	1413	47	13
HENRY V.	Eldest son of Henry IV.	1413	1422	34	9
HENRY VI.	Only son of Henry V. (Died 1471)	1422	Dep. 1461	49	39
	THE HOUSE OF YORK.				
EDWARD IV.	His grandfather was Richard, son of Edmund, fifth son of Edward III.; and his grandmother, Anne, was great-granddaughter of Lionel, third son of Ed. III.	1461	1483	41	22
EDWARD V.	Eldest son of Edward IV.	1483	1483	13	0
RICHARD III.	Younger brother of Edward IV.	1483	1485	35	2
	THE HOUSE OF TUDOR.				
HENRY VII.	Son of Edmund, eld. son of Owen Tudor, by Katharine, widow of Henry V.; his mother, Margaret Beaufort, was great-granddaughter of John of Gaunt	1485	1509	53	24
HENRY VIII.	Only surviving son of Henry VII.	1509	1547	56	38
EDWARD VI.	Son of Henry VIII., by Jane Seymour	1547	1553	16	6
MARY I.	Dau. of Hen. VIII., by Kath. of Arragon	1553	1558	43	5
ELIZABETH	Dau. of Hen VIII., by Anne Boleyn	1558	1603	70	44
	THE HOUSE OF STUART				
JAMES I. (VI. of Scot.)	Son of Mary Queen of Scots, granddau. of Jas. IV. & Margaret, dau. of Hen. VII.	1603	1625	59	22
CHARLES I.	Only surviving son of James I.	1625	1649	48	24
	—				
COMMONWEALTH	Commonwealth, declared May 19	1649	—	—	—
	Oliver Cromwell, Lord Protector	1653	1658	59	—
	Richard Cromwell, Lord Protector	1658	Res. 1659	—	—
	THE HOUSE OF STUART—RESTORED.				
CHARLES II.	Eldest son of Charles I.	1660	1685	55	25
JAMES II.	Second son of Chas. I. (died 16 Sep., 1701)	1685	Dep. 1688	68	3
	(Interregnum, Dec. 11, 1688–Feb. 13, 1689)				
WILLIAM III. and MARY II.	Son of William, Prince of Orange, by Mary, daughter of Charles I. / Eldest daughter of James II.	1689	1702 / 1694	51 / 33	13 / 6
ANNE	Second daughter of James II.	1702	1714	49	12
	THE HOUSE OF HANOVER.				
GEORGE I.	Son of Elector of Hanover, by Sophia daughter of Eliz., daughter of Jas. I.	1714	1727	67	13
GEORGE II.	Only son of George I.	1727	1760	77	33
GEORGE III.	Grandson of George II.	1760	1820	82	59
	(Regency commenced 5th February, 1811.)				
GEORGE IV.	Eldest son of George III.	1820	1830	68	10
WILLIAM IV.	Third son of George III.	1830	1837	72	7
VICTORIA	Daughter of Edward, 4th son of Geo. III.	1837	1901	81	63
	THE HOUSE OF SAXE-COBURG.				
EDWARD VII.	Eldest son of Victoria	1901	1910	68	9

V.—DIGEST OF QUESTIONS AND ANSWERS.

(*Revised up to, and including, the Bar Final Examination for Trinity Term*, 1905.)

(*The references to Text-books are to the following editions:—Anson, Vol. I.*, 3*rd edition; Vol. II.*, 2*nd edition; Dicey*, 6*th edition; Broom's Constitutional Law*, 2*nd edition; Taswell-Langmead*, 5*th edition; Hallam*, 8*th edition; Hallam's Middle Ages*, 12*th edition; May*, 6*th edition.*)

I.—Introductory and General.

Q. Define Constitutional Law.

A. *Constitutional Law* means (in England) all those rules which directly or indirectly affect the distribution or exercise of the Sovereign power in the State. It comprises—(*a*) the law of the Constitution, which is enforced when needful by the Courts, *e.g.*, right of personal liberty; and (*b*) the conventions (understandings) of the Constitution, which are not really laws because no Court would enforce them, *e.g.*, a bill must be read three times in the House of Commons. (Dicey, 22-34.)

Q. State reasons whether the following are, or are not, a part of English Constitutional Law: (1) *The Statute of Treasons*, 25 *Edw. III.*; (2) *The Habeas Corpus Act*, 31 *Car. II.*; (3) *Fox's Libel Act*, 32 *Geo. III.*; (4) *The Act of* 1869 *disestablishing the Irish Church*; (5) *The Act of* 1888 *establishing County Councils.*

A. (1) Allegiance is the duty of all citizens to be faithful to the Head of the State; a breach of such duty is treason; it is a matter of vital import to the Constitution that the law of

treason shall be fixed and invariable; at the request of the Commons the vagueness of Common Law treason was defined by the Treason Act 1351, which simply declares what constitutes treason; the statute is therefore part of our Constitutional Law. (2) The right of personal liberty is part of our Constitutional Law; it is declared by Magna Charta and the Petition of Right; the Act of Charles II. prevents all devices by which the right to a writ of habeas corpus may be evaded either by the judges or the gaoler when a person is imprisoned on a charge of crime, and has been extended by 56 Geo. III., c. 100, to all other cases of imprisonment; it makes illegal confinement almost impossible, and enables the judicature to check abuse of power in this respect by the executive. (3) It is a part of our Constitution that a man may write or print anything he pleases without any previous licence, subject to the consequences of law (*i.e.*, subject to the opinion of 12 jurymen whether the matter published is blameable). After the Revolution of 1688, the judges strained the law by holding that in prosecutions for libel the jury could not give a general verdict, but only decide on the publication and the meaning of the words. Fox's Libel Act 1792 declares that the jury shall give a general verdict in criminal proceedings for libel subject to the direction of the judge on what constitutes a libel. (4) The Act of Union with Ireland is part of our Constitution; its 5th Article tried to create an Established Church for ever; in 1869 the Legislature annulled that 5th Article and made other provisions, showing that any part of our Constitution can be altered at the will of the Legislature for the time being. (5) The Act is part of the Constitution; for laws can be made and taxes levied only by sanction of Parliament; and by this Act Parliament created an administrative county which is taxed and governed for most local purposes by a representative body, kept in check by the Local Government Board; it is a striking instance of the modern tendency

towards decentralisation, *i.e.*, towards letting each locality govern itself for local administrative purposes. The Act of 1894 makes the Parish Council the unit of *rural* local government—so that the sequence is the Parish Council, the District Council, the County Council, and the Local Government Board.

Q. What are the chief characteristics of the English Constitution? Mention the principal sources of English Constitutional Law.

A. The chief characteristics are: (1) a gradual adaptation of rules to convenience; (2) its theory and practice are divergent, *e.g.*, in the process of Legislation or in the executive; (3) it is largely unwritten; (4) the omnipotence of Parliament, which can alter any part of the Constitution at will, though one Parliament cannot bind a future one; (5) its dualism—*i.e.*, the executive and legislative powers are lodged in different bodies (the Crown in Council and the Crown in Parliament) brought into harmony by Cabinet and Party Government. (1 Anson, 33-41.) According to Dicey, the characteristics are: (1) the legislative sovereignty of Parliament; (2) the rule of law; (3) that its conventions sometimes depend upon its law; (4) it is flexible, not rigid. (Dicey, 34.) The principal sources are Common Law, Statute Law, judicial decisions, and parliamentary practice; *or*, according to Boutmy, they are: (1) treaties or *quasi* treaties, *i.e.*, the Acts of Union; (2) the Common Law; (3) solemn agreements between Crown and subjects, *e.g.*, the Bill of Rights; and (4) Statutes. (Dicey, 6 (*n*).)

Q. Distinguish between the law and the custom of the Constitution. By what sanctions is the latter enforced?

A. *The law* of the Constitution means those rules affecting the distribution or exercise of the Sovereign power in the State which are enforced by the Law Courts, *e.g.*, the rights of personal liberty and of public meeting and of freedom of discussion, or the provision of the Bill of Rights

that the Crown cannot dispense with the obligation to obey the law. *The custom* of the Constitution comprises the maxims and practices which regulate the ordinary conduct of the Crown, its ministers, and others, but which are not enforced by the Law Courts, *e.g.*, the King cannot veto a Bill passed by both Houses; ministers must resign if they lose the confidence of the Lower House; in differences between the Upper and Lower House, the former must ultimately give way; Parliament must meet once a year; money bills originate in the House of Commons. The sanction may be a dread of impeachment (practically obsolete); may be the force of public opinion; more probably, it is that a breach of the customs would usually in the long run bring about a conflict with the ordinary legal tribunals. (Dicey, 23, and Part III.)

Q. What is meant by the sovereignty of Parliament? Distinguish between legal and political sovereignty. Are the American Congress and the Dominion Parliament of Canada sovereign bodies?

A. That the King, the House of Lords, and the House of Commons, have under the English Constitution the right to make or unmake any law whatever, which law the Courts must enforce. The supremacy of this right is shown by the Act of Settlement, the Acts of Union, and the Septennial Act, as to public rights; by private Acts as to divorce, legitimacy, railways, &c., as to private rights; and by Acts of Indemnity. There is no other competing legislative authority. Neither moral law, the prerogatives of the Crown, or a previous statute, form any legal restriction on the authority of Parliament. *Legal sovereignty* means the power of making laws unrestricted by any legal limit; *political sovereignty* resides in that portion of the community whose will is ultimately obeyed by the citizens of the State, *i.e.*, in England, those who possess the Parliamentary Franchise. The Dominion Parliament was created by the

British North America Act 1867, and it is *not* a sovereign body, because it is restrained by laws which it cannot change, and which are changeable only by the Imperial Parliament; neither is the American Congress—the legal sovereignty of the United States is vested in a majority consisting of three-fourths of the States belonging to the Union at any given time, and that of the Dominion resides in the British Parliament. (Dicey, 37-81, 145, 162.)

Q. What is an Act of Indemnity? Is a Habeas Corpus Suspension Act such an Act? Give reasons for your answer.

A. A statute passed to legalise acts which when they took place were illegal, or to free individuals from liability for having broken the law, *e.g.*, Acts passed from 1727 to 1828, to free Dissenters from penalties for holding municipal offices without first taking the Sacrament in the Established Church. The Suspension Act is not an Act of Indemnity, for it simply forbids a person arrested under a Secretary of State's warrant for high treason, or suspicion thereof, from insisting upon trial or release; and it is always followed by an Act of Indemnity, which frees from criminal and civil liability all concerned in arresting, imprisoning, or detaining in custody such person. For illustration, see 34 George III., c. 54, and 41 George III., c. 66. (Dicey, 47, 224-233.)

Q. Discuss the meaning of the term "unconstitutional."

A. A thing is "illegal" if it effects a breach of those rules as to the distribution or exercise of the Sovereign power which the Courts of Justice enforce, *e.g.*, if the Crown imposes a tax without consent of Parliament. It is "unconstitutional" if it is a breach of one of the understandings of the Constitution which are usually acted upon, but are not enforced by the Courts, *e.g.*, if ministers do not resign after a vote of censure. (And see Dicey, 464.)

Q. Explain and illustrate the principle of the Rule of Law. Contrast the English Constitution with foreign systems in this respect.

A. The Rule signifies: (1) the absolute supremacy of regular law in England as opposed to arbitrary or discretionary power; (2) the equal subjection of all classes to the ordinary law administered by the ordinary Courts; and (3) the English Constitution is the result and not the source of the ordinary law. Thus, the Belgian Constitution lays down that personal liberty is guaranteed, which indicates it is a special privilege; in England, such freedom arises from the ordinary law, recorded, but not created, by Magna Charta. Censorship of the press expired in England in 1695, and press offences became part of the ordinary law of libel; in France, press offences are still dealt with by special laws and tribunals, for there the Government is superior to ordinary law. The English police have not the special authority to control open-air meetings possessed by foreign police. A military tribunal cannot (as in France) supersede the Civil Courts. The *droit administratif* of France—under which the relations of Government officials to private persons, and all questions arising thereout, are dealt with by special laws administered by official tribunals—is unknown in England, where the nearest approach to it have been the Stuart claim that the prerogatives of the Crown are outside the jurisdiction of the Courts and superior to all laws and the writ *de non procedendo rege inconsulto.* (See Dicey, Part II.)

Q. What is the distinction between "rigid" and "flexible" Constitutions? Do you consider the distinction practically valuable?

A. A flexible Constitution is one under which every law of every description can be legally changed with the same ease, and in the same manner, by one and the same body. A rigid Constitution is one under which certain laws (called "constitutional" or "fundamental" laws) cannot be changed in the same mode as ordinary laws. A rigid Constitution tends to check innovation, but may provoke revolution. (Dicey, 122 *et seq.*)

Q. What are the chief points of contrast between the English and the American Constitutions, especially as regards sovereignty?

A. The English Constitution is flexible, the American rigid. Sovereignty is lodged—under the English Constitution (*a*) legally, in Parliament (*i.e.*, the King, the House of Lords, and the House of Commons), which has power to alter the Constitution at will; (*b*) politically, in the electorate, who, in the long run, would always impose their wishes on Parliament—under the American Constitution,* in three-fourths of the States belonging to the Union at any given time, and no State can be deprived of its equal suffrage without its own consent. Under the American Constitution, the powers possessed by the Federal Government are strictly defined by the written Constitution; the executive power is lodged in the President, the legislative power in Congress (which may legislate on 18 topics only), and the judicial power in the Federal Court—each acting independently of the other; any new law must be declared void by the Federal Court if it is in conflict with the Constitution. England has no written Constitution to be found in one or more documents; Parliament has the supreme power in everything. Each new American law is exactly analogous to a bye-law of an English railway company, and its validity is a question for the Federal Court; each new English law is an addition to, or alteration of, the Constitution, and no Court can declare it invalid. (Dicey, Part I.) The English crown is inherited under a statutory entail, the President is elected by the majority of States in the Union every four years.

* Amendment may be proposed by a two-thirds majority of both Houses, or of a Convention called for that purpose on request of two-thirds of the States in the Union. Such amendment must then be submitted to each State for ratification. If ratified by the legislatures or by special conventions in three-fourths of the States, the amendment becomes part of the Constitution.

Q. Contrast the powers of the Law Courts in regard to laws passed by the respective Legislatures of the United Kingdom, the United States, a British Colony, and France.

A. In the United Kingdom, the Law Courts must administer such laws, and can only consider the interpretation of the law. In the United States and a British Colony, the Law Courts have and exercise the positive duty of seeing whether such a law conflicts with any part of the written Constitution, and, if it does, must declare it void and unenforceable. Thus, in the United States, the Law Courts held the Income Tax Act passed by Congress in 1894 to be void; the Constitution of the United States requires direct taxation to be apportioned among the States according to their representation, and all other taxes to be uniform throughout the States; the Income Tax on real property was a direct tax, and was held void because the 1894 Act did not apportion it; the Income Tax on personalty was held void because incomes under £800 were to be exempt, and thus it was not uniform. The French Courts would probably enforce such a law, though contrary to the written Constitution, if the Executive Government desired it.

Q. What do you understand by "Federalism"? Describe briefly its essential characteristics.

A. Federalism is a political contrivance intended to reconcile national unity and power towards the rest of the world, with the maintenance of "State rights" in each State in the Federation. It involves a distribution of the forces of the State among a number of co-ordinate bodies, each originating in and controlled by a written Constitution; as opposed to Unitarianism under which the strength of the State is concentrated in one visible Sovereign power, *e.g.*, Parliament. Its aim is to carry out the desire of (more or less) allied countries to have national unity and power combined with the maintenance of the independence of each

State. It has three leading characteristics: (1) the supremacy of the Constitution; (2) distribution of the powers of government among bodies with limited and co-ordinate authority; (3) the duty of the Courts to interpret the Constitution. The first point involves a written Constitution. which elaborately divides the ordinary powers of Sovereignty between the National Government and the State legislatures, and which must be rigid (*i.e.*, legally immutable, or mutable only by an extraordinary process), and which constitutes each State legislature a subordinate law-making body. As compared with Unitarianism, Federalism involves weak government, tends to Conservatism, and depends on the predominance of the judiciary. The United States, Dominion of Canada, Commonwealth of Australia, Swiss Confederation, and German Empire, are illustrations of Federalism. (Dicey, Part I., ch. 3.)

Q. Give a short account of the Commonwealth of Australia and contrast it with Canada.

A. It was constituted by an Act of the British Parliament in 1900, as a Federation coming into existence on 1st January, 1901. The Commonwealth Parliament consists of a Senate elected for 6 years and a House of Representatives elected for 3 years; and can legislate on the 42 topics reserved to it by sections 51 and 52. The various States can legislate for themselves on all other topics. The Federal Government cannot annul State legislation. The Constitution can be altered by a proposal passed by an absolute majority in each House of the Commonwealth Parliament, and within 6 months afterwards approved by a majority of the electors voting in the majority of the States, and also by a gross majority of all the electors who vote in all the States. There is no appeal from the Federal Court to the Privy Council, except by special leave (sec. 74). In the Dominion of Canada, the State Parliaments can legislate only on specific topics, and the Dominion

Parliament on all others; the Constitution can only be changed by the British Parliament; appeals go to the Privy Council; the Senators are nominated by the Governor General for life, and the Representatives are elected for 5 years; and the Dominion Government can annul State legislation.

Q. What provision for appeals to the Privy Council is made by the Australia Federation Act?

A. A new right of appeal from the supreme court of each State is given to the Federal Court (the High Court of Australia), but there is still a concurrent appeal to the Privy Council (sec. 73)—just as in Canada. Appeals may be brought from the Federal Court to the Privy Council; but only by leave of the Federal Court if the question affects the limits *inter se* of the constitutional powers either of the Commonwealth and any State, or of any two or more States (sec. 74).

Q. What do you understand by Imperial Federation?

A. That the United Kingdom, its colonies, and possibly India, should form a federal government to foster trade with each other, to fight hostile foreign customs duties, and for mutual defence. Such a federation would deal with foreign affairs, naval and military matters, commerce, imperial finance, merchant shipping, aliens, post and telegraph, census, coins, weights and measures, sea fisheries, marriage and divorce, extradition, patents and copyrights. It might consist of an Imperial Parliament and an Imperial executive based on the proportionate population of each colony to the United Kingdom, *or* colonial members might be added to both houses of the present imperial parliament, *or* it might start as a federal council of advice to the present imperial cabinet, *or* a federal chamber might be formed with both executive and legislative powers.

II.—The Crown.

Q. Give a short history of the title to the Crown.

A. In Saxon times, the title depended on election by the Witan. The first four Norman Kings sought election by the Commune Concilium. Then came the conception of hereditary right, clearly established by the accession of Edward II. A parliamentary title appears in the depositions of Edward II. and Richard II. Henry VII. claimed by hereditary right, but also combined therewith a parliamentary entail. James I. also combined the two titles. The present title is purely parliamentary. By the Declaration of Rights it was declared that James II. had abdicated and the throne was vacant. The Bill of Rights, 1689, settled the Crown on William and Mary for life, then on the survivor for life, then on the heirs of the body of Mary, then on Anne and the heirs of her body, and lastly on the heirs of the body of William. The Act of Settlement, 1700, gave an ultimate remainder to Sophia of Hanover (granddaughter of James I.) and the heirs of her body being Protestants; and it is under this Act that the Crown is now held. (2 Anson, 57-69; Hallam's Middle Ages, ch. 8.)

Q. What is the nature of the King's title to the throne?

A. It depends on an Act of Parliament. By the Bill of Rights 1689, as amended by the Act of Settlement 1700, the Crown of England was settled on the heirs of the body of Sophia of Hanover, daughter of Elizabeth of Bohemia, daughter of James I.; but the Sovereign cannot be (or marry) a Roman Catholic, and must make a declaration against transubstantiation, take the coronation oath, and join in communion with the Church of England. The Scotch and Irish Acts of Union contain similar provisions. (2 Anson, ch. 2.)

Q. What was Calvin's Case?

A. An action brought in 1608 in the King's Bench to recover land in England on behalf of one Calvin, an infant,

born in Scotland after James I. succeeded to the English Crown. It was admitted that *ante-nati* (persons born in Scotland before James obtained the English Crown) were aliens; but contended (and decided) that *post-nati* were not aliens, and so could inherit land in England—the Acts of Union have made the decision obsolete. The following propositions can be deduced from the case: (1) Allegiance is a true and faithful obedience due from the subject to his sovereign; (2) it is due from every natural-born subject wherever he may be, and from a resident alien during his stay in British territory; (3) it is due to the natural person of the King and not to his politic character only; (4) it is due to a King *de facto;* (5) it accrues on the death of his predecessor; (6) it follows him everywhere; (7) it is indivisible; (8) at Common Law, every person born in British territory is a natural-born British subject, and every one born elsewhere is an alien; but by statute law both the son and grandson born abroad of a natural-born subject are themselves natural-born British subjects (De Geer v. Stone, 22 Ch. D., 243); (9) at Common Law, allegiance can be ended by Statute, or by abdication of the King and a resettlement of the Crown by Parliament, or by dismemberment of the Kingdom, or by a compact for cession of territory, or by the subject becoming an independent Sovereign—but in no other way. Now, British nationality may be renounced or acquired under the Naturalization Act 1870.

Q. Mention the chief provisions of the Naturalization Act 1870.

A. It enacts that real and personal property may be acquired, held, and disposed of by an alien in the United Kingdom in the same way as by a natural-born British subject, except any office, and any franchise, and a British ship. It empowers a naturalized alien to resume his original status by a declaration of alienage. It allows a declaration of alienage to be made by a foreigner born in British

dominions, and by the child of a British subject born abroad. It abolishes the jury *de medietate linguæ*. It declares an adult British subject to be an alien if he voluntarily becomes naturalized in a foreign State. An alien, after five years' residence, may obtain a certificate of naturalization and is then deemed a British subject. A natural-born British subject, who has become a statutory alien, can get a certificate of re-admission to British nationality. The nationality of a wife follows that of her husband. A widow who has become an alien by marriage can get a certificate of re-admission to British nationality. The nationality of infants follows that of their parents. A colony may legislate on naturalization as on other subjects.

Q. What immunities are enjoyed by a diplomatic agent?

A. (1) His children follow his own nationality. (2) He is exempt from the criminal and civil jurisdiction of the State to which he is accredited. (3) The civil exemption extends to his suite and servants. (4) His house is exempt from entry, so far as may be needed to support his dignity and enable him to discharge his duties. (See the Diplomatic Privileges Act 1708.)

Q. Give a short account of the Civil List.

A. The Civil List originally meant an annuity granted by Parliament at the beginning of each reign since the Revolution of 1688, for expenses of the Royal household and establishment and all the expenses of civil government as distinct from the military and naval expenditure of the State, in consideration of the surrender of the hereditary revenues of the Crown to the nation for that reign. But the pay of all civil servants has long since been removed from the Civil List and charged on the Consolidated Fund. So that the Civil List to-day really means an annuity to cover the personal and household and establishment expenses of the Sovereign. Prior to 1688, Parliament granted to each new King for life the rents of

Crown lands (which produce about £500,000 net income), the feudal rights (surrendered by Charles II. in 1660 for the excise duties), proceeds of post office and wine licences, and certain special taxes. William III., Anne, and George I. were each allowed a Civil List of £700,000 in addition to the income of Crown lands; George II., £800,000. George III. surrendered the hereditary revenues of the Crown for his life in exchange for a Civil List of £800,000, out of which he had to pay judges, ambassadors, and civil servants; George IV. had £845,727 on the same terms as George III.; William IV., £510,000, on surrender for life of all Crown revenues; Victoria, £385,000; and Edward VII. £470,000 by the Civil List Act 1901, which extinguishes the hereditary revenue of excise on beer, ale and cider granted by 12 Car. II., c. 24. The effect is that since the accession of George III., Parliament has a direct control over the personal expenses of the King. (Taswell-Langmead, 589; 2 Stephen's Commentaries; 2 Anson, 322.)

Q. What do you understand by the Prerogative? Discuss the statement that "the survival of the Prerogative immensely increases the authority of the House of Commons."

A. The residue of discretionary authority which at any given time is left in the Crown. More fully, the *theoretically* supreme executive and co-ordinate legislative powers of the Crown—by which the King calls, prorogues, and dissolves Parliaments at pleasure; and may veto any Bill; and, as the Fountain of Justice, dispenses his justice through judges appointed to preside in his name in the various courts; and as supreme magistrate and conservator of the peace, nominally prosecutes criminals, and may pardon them after conviction; and, as supreme military commander, has the sole power to raise, regulate, and disband fleets and armies; and, as the Fountain of Honour, has the sole power to create peers, and confer titles, dignities, and offices; and, as legal head and supreme governor of the National Church,

calls, regulates, prorogues, and dissolves Convocation; and has the sole power of sending and receiving ambassadors, of making treaties, and of making war and peace. The statement is true because, *in practice*, these prerogatives are exercised at the will of responsible ministers of the Crown, who represent the will of the majority in the House of Commons—the Revolution of 1688 really transferred the prerogative from the King to the House of Commons. (Green's History of English People, 680; Taswell-Langmead, 572; Dicey, 407.)

Q. Discuss the nature and origin of the Prerogative, and explain the conditions under which it is now exercised.

A. The prerogative means the peculiar privileges attached to Kingship. These include: (*a*) the powers of the Crown in the executive and legislative departments of Government, derived from the tribal chieftaincy; (*b*) the rights of the Crown as feudal lord of the realm to escheat, treasure trove, and custody of idiots and lunatics; (*c*) the legal theories of political perpetuity (the King never dies)* and perfection of judgment (the King can do no wrong). The *executive* prerogative includes everything which the King or his servants can do in all departments of Government without the authority of an Act of Parliament. The *legislative* prerogative includes the power to summon, prorogue, and dissolve Parliament, and veto legislation. The *conditions* under which the prerogative is now exercised depends on (1) the direct limitations to the

*The King never dies—down to Henry III. the reign of each King was dated from his coronation oath, so that there was an interregnum between each reign. Edward I. reigned from the day on which the oath of fealty was taken to him before coronation. Edward II.'s reign is dated from the day following the death of Edward I., which marked the advent of hereditary succession. The maxim itself dates from the accession of Edward IV. Edward VI. was the first instance of a King's reign dating from the moment of his predecessor's death without even an interregnum of a few hours.

(real or alleged) arbitrary powers of the Crown, contained in the Bill of Rights and the Act of Settlement; (2) the theoretically free choice of ministers by the sovereign being governed in practice by the electorate; (3) the modern doctrine that ministers, and not the King, are responsible for the determination of policy, as the King never acts alone, but only through the medium of a minister; (4) the legal irresponsibility of the King, and legal liability of one who carries out his command; and (5) executive acts, to which the King is necessarily a party, require to be done by order in Council, or under the sign manual, or under the great seal. (Dicey, 367; 2 Anson, ch. 1.)

Q. What is the origin and meaning of the legal maxims, "The King can do no wrong," and "The King is the Fountain of Justice"?

A. The first maxim had its origin in the practical convenience of the theory that the King's ministers are responsible for the acts done by the King's command; it appears to date from the accession of Henry III. at nine years of age; it *now* means (*a*) that by no legal process can the King be made liable for an act done by himself or his orders, and (*b*) that no one can plead the orders of the Crown as a justification for an illegal act. (Anson, Vol. II., 5; Dicey, 24.) The second maxim may be said to originate in the prerogative of the King as supreme magistrate to see to the administration of justice. He is the source of all judicial power in the State, and the judges sit as his delegates in his name; by a fiction of law he is regarded as the ultimate owner of all land in the realm, and as such is interested in all offences, which consequently are prosecuted in his name, and he can pardon all offences. But it was decided in the Case of Prohibitions in 1607 that he cannot personally take part in the trial of any case; and he cannot refuse the use of his name in criminal cases; and, since the Act of Settlement, judges are no longer removable at the pleasure

of the Crown, and receive fixed salaries, paid, under George III., out of the Civil List, but now out of the Consolidated Fund instead. (De Lolme, 72, 88.)

Q. Examine the proposition that "Some person is legally responsible for every act done by the Crown." On what legal principles is this responsibility based?

A. The proposition is a rule of Law, which means that each Minister of the Crown is legally responsible for each act of the Crown in which he takes part; he suffers by loss of place and power for unwise advice, and in a Court of Law for illegal acts. The express command of the King to commit a civil wrong or crime is no answer in an English Court of Law. The legal principles involved are three: (1) The King can do no wrong; (2) custom or statute requires executive acts of the Crown, to which the sovereign is a necessary party, to be done in a particular form, *i.e.*, by Order in Council, or by document under the sign manual or under the Great Seal; (3) a Minister who affixes a seal or countersigns a document is responsible for the act he assents to. (2 Anson, 42-56; Dicey, 24, 319-321.)

Q. What is a Petition of Right, and when will it lie?

A. It is a process resorted to when a subject alleges: (1) that the Crown has got his land, or goods, or money, and he claims restitution or compensation; or (2) that he has a claim against the Crown arising out of a contract, but not for torts. It does not extend to cases of wrong alleged to be done by the Crown or the Crown servants (Tobin v. The Queen, 16 C. B. (N. S.), 310.) The procedure is to prepare a petition which fully sets out all the circumstances and lodge it with the Home Secretary; after enquiry, in a suitable case, the petition is returned with an indorsement Let right be done to the party; it is then served on the Treasury Solicitor, who enters an appearance; the Attorney General delivers an answer; and the case is then tried like a civil action (Petition of Right Act 1860). (2 Anson, 475.)

Q. What were the chief points decided in the Bankers' Case in* 1690?

A. (1) That prior to the Revolution the King could lawfully alienate the revenues of the Crown so as to bind his successors; (2) that the proper mode of procedure against the Crown is by Petition of Right to compel payment of annuities granted by it. (Broom, 225; 14 State Trials, 1.)

Q. What remedies are available against the Crown and its servants for breach of contract or tort?

A. Against the Crown—there is no remedy of any kind for an alleged tort (Tobin v. The Queen, 16 C. B. (N. S.), 310) in the United Kingdom, though in some colonies a remedy by Petition of Right has been expressly conferred (Attorney General v. Wemyss, 13 App. Ca., 192); but a claim for liquidated or unliquidated damages for breach of contract is redressed by Petition of Right (Windsor Ry. v. The Queen, 11 App. Ca., at p. 615). A servant of the Crown cannot be made personally liable if he contracts on behalf of the Government (Gidley v. Lord Palmerston,† 1822); but is personally liable for a tort (Entick v. Carrington, 19 St. Tr., 1030)—except for Acts of State (Buron v. Denman, 2 Ex., 147), and except a military or naval officer acting in the course of his duty, for the Army Act or Naval Discipline Act affords a remedy by complaint to the Commander-in-Chief (Dawkins v. Paulet, L. R., 5 Q. B., 94), and except a judge, who is not liable for acts or words in his judicial capacity in a court of Justice (Anderson v. Gorrie (1895), 1 Q. B., 668), and except the Lord Lieutenant of Ireland

* Charles II. had borrowed from bankers and granted them annuities out of the hereditary excise. These annuities fell into arrear, and the bankers sued for payment under their contracts. The bankers derived no benefit from the decision in their favour until 1701, when a statute gave them 3 per cent. interest until their loan should be extinguished by repayment of half the sum lent.

† In which it was held that a clerk in the War Office could not sue the Secretary for War for arrears of pay.

(Sullivan v. Spencer, 6 C. L. (Ir.), 176), and except where an Act of Indemnity has freed him from liability (Phillips v. Eyre, 40 L. J., Q. B., 28). A mandamus, or action for account, or action for money due, does not lie against a servant of the Crown as such unless it can be shown that some Statute, or some Order of the Crown, has imposed upon him a duty to the public as distinct from his duty to the Crown (The Queen v. Secretary for War, 1891). As to booty of war, the Crown has absolute discretion in disposing of it, and can revoke or modify at will any scheme for its distribution, and treasury warrants and royal orders providing for its distribution and vesting it in trustees create no trust enforceable in a court of equity (Alexander v. Duke of Wellington, 2 St. Tr. (N. S.), 764, 1071). (2 Anson, 475-480.)

Q. Where does the Constitution place the treaty-making powers, and what are the limitations on its exercise?

A. In the Crown alone; but in practice the Crown must act through, and on the advice of, responsible ministers. A treaty which involves a charge on British subjects, or a change in the law of the land, can be made, but cannot be carried into effect, without the authority of Parliament. Whether a treaty can exempt foreigners from the ordinary law to the prejudice of private rights was discussed, but not decided, in The Parlement Belge (1880), and in Walker v. Baird (1892). A treaty ceding territory does not need the sanction of Parliament, though that was asked for as to Heligoland in 1890. (2 Anson, 296-300.)

Q. What checks on the Royal authority existed at the accession of Henry VII. in 1485?

A. (1) No new tax could be levied except by assent of Parliament. (2) Every new law required the assent of Parliament. (3) No one could be imprisoned save by legal warrant naming his offence. (4) Criminal and civil cases were tried by a jury of 12 as regards facts. (5) Servants of the Crown infringing the rights of a subject could be

sued for damages, and could not plead the King's authority as a defence. (6) Ministers could be impeached for misgovernment. (1 Hallam, 2.)

Q. In what ways did Henry VIII. evade the exclusive right of Parliament (1) *to levy taxes*; (2) *to make laws?*

A. (1) By an illegal system of Forced Loans and Benevolences—from liability to repay which servile Parliaments in 1529 and 1544 released him. (2) By the Statute of Proclamations in 1539, which made Proclamations by the King in Council of the same validity as Acts of Parliament —until it was repealed in 1547. (Taswell-Langmead, ch. 10; 1 Anson, 306-308.)

Q. What were the constitutional results obtained by the Parliaments of James I. in their contests with the Crown?

A. The Statute of Monopolies which forbids monopolies, except letters patent for inventions for 14 years. The revival of the ancient right of impeachment by the Commons. They placed on record a Protestation of their claim to freedom of debate on all matters of public concern. They remonstrated against the usurped powers of binding the subject by proclamations, and of levying customs at out-ports. They secured the exclusive privilege of determining contested elections to the Commons. (1 Hallam, 373.)

Q. What were the chief causes of conflict between Charles I. and his early Parliaments? Describe his attempt to govern without a Parliament, and the causes of its failure.

A. With the First Parliament (1625), it was that they only granted supply for one year instead of for the King's life, and insisted on further supply being dependent on the redress of grievances. With the Second Parliament (1626), it was the same causes, coupled with the impeachment of Buckingham and the interference of the King with the privileges of Parliament by imprisoning members. With the Third Parliament (1627), it was the King's illegal exaction of loans; the arbitrary commitment of those who would not

pay; the refusal of a habeas corpus to those committed (Darnel's Case); billeting soldiers on private persons, and infliction of punishments by martial law; the contest over the Petition of Right remedying these abuses, and the disregard paid to that statute; the attempt of the King to deal with religion as he wished without consent of Parliament; and tunnage and poundage. With the Fourth Parliament (1640), it was ship money chiefly. The Long Parliament followed in the same year. From 1629 to 1640 Charles governed without a Parliament; the Government was a failure (1) because it had to depend for supplies upon illegal exactions, *e.g.*, ship money; (2) because legislation was by Royal proclamation without assent of the people; (3) because when the King tried to force a liturgy on Scotland it had to be done by force, and the illegal methods of supply proved utterly inadequate to support an army. (Taswell-Langmead, chs. 13 and 14.)

Q. Discuss the respective influence of political and religious forces in bringing about the final rupture between Charles I. and the Long Parliament.

A. The Commons took up a conservative position, whilst the King was for innovations. In politics, the Commons sought to preserve the free English Constitution, as it existed prior to the despotic practices of the Tudors and the despotic theories and practices of the Stuarts. In religion, the Commons upheld the narrow Calvinistic theology which had been prominent in the Established Church from the Reformation to the beginning of the 17th century, and proceeded against the authors of all ceremonial innovations. Neither King nor Parliament thought of religious liberty, but each tried to force antagonistic views on the other.

Q. How was England governed between the execution of Charles I. and the Restoration?

A. The Government assumed the form of a Republic, but was really a military despotism. The Rump (*i.e.*, the

remnant of the Long Parliament after Pride's Purge) was an instrument to carry out the will of the army; it voted the House of Lords useless and dangerous, abolished Kingship, and replaced the old Constitutional forms by the Commonwealth of England. The executive power was in a Council of State of 41 military and parliamentary persons. The real executive power was in Cromwell, and was formally deputed to him by the Instrument of Government in 1653 with the title of Lord Protector. In 1655 the country was divided into 10 military districts under prefects. On the death of Cromwell, in 1658, the weakness of his son exposed the Government to a succession of petty military despots; the army first used Richard, then set him aside, then re-called the Long Parliament, and finally all parties united under Monk to restore the old form of civil polity under Charles II.

Q. What were the chief provisions of the Instrument of Government?

A. After Cromwell drove out the Parliament in 1653 a Provisional Council of State, consisting of Cromwell, 8 officers, and 4 civilians, was formed. This Council selected 139 persons from a list of names submitted by the ministers of various Independent churches, and summoned them as the Convention (Barebones) Parliament to draw up a Constitution. The Convention appointed a Council of State, and then resigned its powers to Cromwell. This Council drew up a written constitution (the Instrument of Government), which was adopted by the council of officers representing the army. The Instrument made Cromwell a Lord Protector, with strictly defined powers; provided for the summoning of a really representative Parliament; conferred the franchise on males worth £200, except Papists and malignants; appointed a Council as an administrative check on the Protector; provided that taxes and laws were only to be made by Parliament; anything passed by Parliament

to be law after 20 days, although the Protector's consent be refused; Parliament to meet triennially; a standing army of 30,000 to be kept up. (Green, 583.)

Q. How may the Constitutional results of the Commonwealth be summed up?

A. (1) Absolute monarchy was rendered impossible, and the principle established that the close union and mutual inter-dependence of King and Parliament are necessary for the good of the realm. (2) The predominant influence of the Commons in government of the nation was permanently established, and has been growing ever since. (3) Romanism was rejected as a national religion; but the Church (which is national in theory) became apparently the Church of a majority only, and is called Established Church to denote one religious body occupying a special position to the State as distinguished from all other religious bodies. (4) National antipathy to a permanent standing army in time of peace was developed and intensified. (Taswell-Langmead, 509.)

Q. Give a short history of the controversy relating to the suspending and dispensing power.

A. *The suspending power* means the prerogative claimed by James II. of suspending the operation of the law of the land whenever he thought it right so to do. In 1687 he issued his Declaration of Indulgence, suspending all the penal laws relating to religion; this was argued in the Seven Bishops' case, and led to the Revolution of 1688. The suspending power originated under Henry III.; Edward I. suspended the Statute of Carlisle in 1307; Edward III., in 1391, suspended the Statute of Provisors; and both the Tudors and the Stuarts used it. But the Bill of Rights now enacts that there is no suspending power without authority of Parliament. *The dispensing power* means the privilege of the Crown to dispense with the operation of a statute in a given case, though not generally. Thomas v. Sorrell (an action for

selling wine without a licence as required by statute, defended on the ground of letters patent privileging the Vintners' Company to sell wine *non obstante statuto*) decided in 1674 that the King could not dispense with things *mala in se*, but could dispense with *mala prohibita* if passed for the King's profit. Godden v. Hales in 1686 laid down that the King could dispense with the Test Act 1673, requiring a military officer to take the oaths of supremacy and allegiance. The Bill of Rights takes away the power to dispense with any statute as from the passing of that Act. (1 Anson, 311-320.) *The prerogative of mercy* is a dispensing power, which may be exercised (by reprieve, commutation or pardon) after conviction for any public offence, but it cannot take away any civil rights of action, and may only remit or modify punishment.

Q. (A) *What was the decision in Godden v. Hales?* (B) *How was it dealt with in the Bill of Rights?* (C) *Has the question of a dispensing power been raised since the Revolution?*

A. (A) That James II., *as King*, had a dispensing power to exempt a military officer from taking the oaths of supremacy and allegiance required by the Test Act 1673. (B) The Bill of Rights (sec. 12) expressly abolished this dispensing power as from 25th October, 1689, except as to charters, grants and pardons made before the Act. (C) It was raised in 1815 in the case of Eton College, when it was decided that a dispensation granted by Queen Elizabeth in 1566 to the Fellows of Eton to hold a benefice with a fellowship, notwithstanding the contrary provision in the Statutes of Henry VI. founding the College, was still valid. (Broom, 503.) In 1766 the Crown, apprehending a famine, prohibited the exportation of corn; but Parliament resolved that this was illegal, and, as the dispensing power was abolished, an Act of Indemnity was passed. (Broom, 503-506.)

Q. Give the main provisions of the Bill of Rights, 1689 (1 *William and Mary, st.* 2, *c.* 2).

A. It enumerates the grievances against James II., and declares that he has "abdicated" the government, and the throne is thereby vacant. It declares that the Crown cannot suspend any law without the consent of Parliament; that the Crown cannot after this Act grant dispensations *non obstante statuto;* that James II.'s Ecclesiastical Court Commission and all like commissions are illegal; that levying money for the Crown without grant of Parliament is illegal; that subjects have a right to petition the King without punishment; that a standing army cannot be raised or kept within the realm in time of peace without authority from Parliament; that Protestant subjects may carry arms for defence; that parliamentary elections ought to be free; that freedom of speech in Parliament ought not to be questioned elsewhere; that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that juries ought to be duly impannelled; that a grant of forfeitures before conviction is void; and that Parliaments ought to be held frequently. It declares William and Mary to be King and Queen, and after them limits the Crown to the issue of Mary, and then to Anne of Denmark and her issue, and then to the issue of William. It enacts that the Sovereign must not be (or marry) a Papist, and must make the declaration against transubstantiation.

Q. State the chief provisions of the Act of Settlement 1700, *the circumstances that gave rise to them, and whether or not they were permanent.*

A. It recites the Bill of Rights, and the death of Mary without issue, and of the surviving child of Anne of Denmark, and the desire for a further limitation of the succession to the Crown; and it enacts that (after the deaths of William and Anne, and their issues) the Crown shall devolve on Sophia of Hanover (granddaughter of James I.) and the

heirs of her body, being Protestants. It declares that each new King or Queen must take the coronation oath, and must join in communion with the Church of England. *Its constitutional provisions* are: (1) the monarch must become a member of the Established Church of England; (2) that if the monarch is not a native of England, the nation shall not without consent of Parliament engage in any war for defence of his foreign possessions; (3) that the monarch shall not leave England, Scotland, and Ireland without permission of Parliament—repealed 1 George I.; (4) that matters proper for the Privy Council shall be done there and signed by assenting councillors—repealed 4 & 5 Anne, c. 20; (5) that a person born abroad of other than English parents cannot (though naturalized or made a denizen) be of the Privy Council or in Parliament, or enjoy any civil or military office, or have a grant of land from the Crown—this clause is virtually repealed by section 7 of the Naturalization Act 1870, as regards all persons who obtain certificates of naturalization; (6) that no person having an office, or place of profit, or pension, from the Crown can be a Member of the House of Commons—repealed 4 & 5 Anne, c. 20; (7) that judges shall hold office during good behaviour at fixed salaries, but may be removed on address from both Houses of Parliament—fresh provision was made by a statute of Anne; (8) no pardon under the Great Seal can be pleaded to an impeachment; and (9) all the laws and statutes of the realm for securing the established religion and the rights and liberties of the people, and all other laws and statutes then in force, were ratified and confirmed.

Q. What are the provisions of the Royal Marriage Act, 22 George III., c. 11?

A. It enacts that no descendant of the body of George II. (save the issue of princesses married into foreign families) can make a valid marriage—except (1) with

the consent of the King or Queen regnant (for the time being) given under the Great Seal and set out in the marriage license and registered and entered in the Privy Council books; or (2) such descendant is above 25 years old, and has given 12 months' notice to the Privy Council, and there has not during the 12 months been a declaration of the Lords and Commons expressing disapproval. All persons concerned in a breach of the statute incur the penalties of *præmunire*.

Q. What unconstitutional expedients were adopted by George III. to increase the influence of the Crown?

A. After the Revolution, the personal influence of the Sovereign tended to decline, owing to: (1) the disputed succession to the Crown between Hanoverian and Jacobite, (2) the development of party government by the cabinet system, and (3) abstention of the King from cabinet councils. But George III. tried to govern as well as reign; he began by forming a body of secret counsellors called "the King's friends," by whose support he tried to govern independently of Parliament, people, and ministers; parliamentary placemen and public officials who opposed the King's views were dismissed; he opposed the repeal of the Stamp Acts, which led to our loss of the American Colonies; he instructed ministers under Lord North on all points; he dispensed all patronage; and in all ways tried to be his own minister and adviser. In 1780 Dunning carried a resolution in the Commons "that the personal influence of the Crown has increased, is increasing, and ought to be diminished"; after which the personal influence of the King decreased to some extent.

Q. Discuss the action of George III. and William IV. in dismissing their ministers in 1783 *and* 1834.

A. The action of each King was Constitutional, as the law and practice of the Constitution justify a dismissal of Ministers who command a majority in the House of

Commons (with the necessary sequence of a general election) whenever there is a fair reason to suppose that the wishes of the majority in the Commons do not represent the wishes of the majority of the electorate. Each King dismissed such a Ministry; in each case a dissolution followed; but, whilst in 1784 the result of the election showed the King was right and the previous Parliament wrong, in 1834 the result showed that the nation (though by a diminishing majority) thought Parliament was right and the King wrong. (Dicey, 377.)

Q. Give a concise account of Regencies in England.

A. The Common Law makes no provision for incapacity in a King by reason of infancy, or insanity, or absence, or illness, or misgovernment. Hence special provision has to be made for each occasion. A chief justiciar, appointed by the King, originally acted during the King's absence on the Continent. Henry III. was proclaimed at 9 years of age, and the barons appointed regents. Edward I. was abroad at his accession, and regents were appointed till his return. Edward III. succeeded at 14, and Parliament nominated a Council of Regency. Richard II. succeeded at 10, and acted with a Council named by Parliament. Henry VI. succeeded at 9 months, and Parliament appointed a regent—establishing the principles: (1) that a King has no constitutional prerogative to appoint a regent to act during the minority of his successor; and (2) that Parliament alone can appoint a regent. These principles were acted upon during the insanity of Henry in 1454 and 1455. The first Regency Act acted upon was 28 Henry VIII.; it empowered the King to appoint a Council of Regency to act after his death until his successor was 18 (or, if a female, 16). The Regency Act 1751 appointed a regent to act with a council if George II. died before his successor was 18; a further Act in 1765 allowed the King to nominate the regent. During the insanity of George III. in 1788 and again in 1811, Parliament resolved that the King was incapable, that it

was its duty to provide for the emergency, that the Prince of Wales be appointed regent, and that a commission be issued to give the royal assent to the Regency Bill. In 1831 a Regency Act was passed which was never required. In 1838 a Regency Act was passed to provide for the event of the Queen's successor being abroad at her death; and another, in 1840, providing that the Prince Consort should be regent if the Queen died leaving a child under 18. (1 May, ch. 3.)

Q. In what cases has Parliament deposed a King?

A. Edward II., Richard II., and James II. Henry VI. was deposed by the barons and not by Parliament.

III.—Parliament.

Q. Give some account of the powers of the Witanagemot.

A. The Witan had the right of being consulted upon every public act that could be authorised by the King. It deliberated upon the making of new laws, and sanctioned the King's proclamation thereof. It had the power to make alliances and treaties of peace. It could elect the King; and could depose him for mis-government. It was a Supreme Court of Justice in Civil and Criminal Cases. It assented to grants of folkland (public land) to be held as bocland (private property). It declared the lands of wrongdoers forfeited to the King. In conjunction with the King it appointed to bishoprics, regulated ecclesiastical matters, levied taxes, and raised naval and military forces when necessary. (See 2 Kemble's Saxons in England.)

Q. Trace the growth of representative government in England during the thirteenth century.

A. This covers the reigns of John, Henry III., and Edward I. The Witan of the Saxons was superseded at the

Conquest by the *Commune Concilium Regni* of the Normans; this was a feudal court, to which all military tenants *in capite* (holding direct from the Crown) had a right to be summoned, and it met three times a year to give a formal assent to legislation and taxation, to act as a court of justice, and (when occasion required) to elect a king. The infringement of this right of all the tenants-in-chief to be called when councils were summoned to grant extraordinary aids, led to the provision in Magna Charta (1215) that the archbishops, bishops, abbots, earls, and greater barons should be summoned individually, and that all other tenants-in-chief should be called *in generali* by writs addressed to the sheriffs—40 days' notice to be given of the place and business for meeting, and no aid (except the three feudal aids) to be imposed without consent of this *Commune Concilium*. This was not really a provision for a representative Parliament, for (1) the inferior clergy, the towns, and tenants of mesne lords were not summoned, and (2) its only business was a special taxation. Under John in 1213 the barons held a representative council at St. Albans, and the King one at Oxford (*infra*). In 1220 and 1225 subsidies granted in Parliament to Henry III. were assessed by knights freely chosen in the County Courts. In 1258 each county was directed to elect 4 knights to inquire into grievances and make returns to Parliament. In 1265 to Simon de Montfort's Parliament 2 knights were summoned from each county and 2 citizens from each city or town. In 1295 the Model Parliament of Edward I. summoned the three estates of the realm—the Clergy, the Baronage, and the Commons. (Hallam's Middle Ages, ch. 8; 2 Stubbs' Const. Hist., 128; 1 Anson, ch. 4; Taswell-Langmead, ch. 7.)

Q. Trace the growth of county and borough representation down to the Model Parliament of Edward I.

A. In August, 1213 (John), the bishops and barons and the reeve and 4 men to represent each township in the royal

demesne, were summoned to a National Council at St. Albans. In November, 1213, John summoned 4 discreet knights of each shire to Oxford, *ad loquendum nobiscum de negotiis regni nostri*. In 1254 Henry III. summoned 2 knights from each county to consider what aid they would grant for the foreign war, to represent the whole country, and to be elected in the County Court by the suitors thereof. The Mad Parliament (1258) drew up the Provisions of Oxford, under which there were an elective Council (15) of State, Committee (24) to treat of aids for the war, and Committee (12) to treat of the common need. In 1261, the barons summoned 3 knights from each county to deliberate with them at St. Albans, and Henry III. did the same to deliberate with him at Windsor. In 1264, to Simon de Montfort's first Parliament, 4 knights from each county were summoned; and to his second Parliament, in 1265, 2 knights from each county, 2 citizens from each city, and 2 burgesses from each town. From 1265 to 1295, was a transitional period of varying practice; but in 1295 the precedent of 1265 was followed. (Taswell-Langmead, ch. 7.)

Q. What was the Model Parliament, and why so called?

A. Edward I.'s Parliament in 1295. It was the ideal of a representative assembly at that epoch. The French war, a Welsh rebellion, and a Scotch war, made it necessary for the King to have full national support. Accordingly, he summoned (1) the clergy—archbishops, bishops, and abbots, by special writs; and deans, archdeacons, and proctors to represent the inferior clergy, by a premunientes clause in the writs to the two former; (2) the baronage, by special writs —7 earls and 41 barons; and (3) the Commons—2 knights elected by each county, 2 citizens by each city, and 2 burgesses by each town. Each body sat separately—the clergy voted a tenth of their moveables, the barons an eleventh, and the commons a seventh. This Parliament

definitely fixed in the English Constitution the principle of government by King, Lords, and Commons. (Taswell-Langmead, ch. 7.)

Q. When did Parliament divide into the House of Lords and House of Commons?

A. Under Edward III. The knights of the shire represented the freeholders of the county, by whom they were elected in the County Court. In 1332 the knights voted separately from the barons. In 1333 the knights sat with the burgesses, and in 1347 the knights and burgesses were definitely fused into one body. Reasons for the fusion were probably—that both knights and burgesses were delegates, were summoned through the sheriff, had similar local interests, and were only summoned to consent to measures already decided. From Edward III. the clergy ceased to attend, preferring to tax themselves in Convocation, and this left only two Houses. In 1664 the clergy abandoned the right to tax themselves, and since then have voted in respect of their glebe lands.

Q. Give an account of the proceedings of the "Good Parliament" of 1376 *(Edward III.).*

A. The Commons asserted its right to check misgovernment by the Crown and barons. Parliament added 12 persons to the Royal Council, without whose assent nothing important should be done. It impeached 2 ministers (Lords Latimer and Neville) and 4 farmers of customs, for removing the Staple from Calais, lending money to the Crown at usurious rates, and buying old debts owing by the Crown at small prices and then paying themselves in full out of the Treasury; all were convicted. It declared a desire for annual sittings, freedom of elections, abolition of arbitrary taxation and Papal interference, protection of trade, enforcement of the Statute of Labourers, and restrictions on the powers of Trade Guilds. But in 1377 another Parliament, packed by the Duke of Lancaster, undid, as far as possible,

the work of the Good Parliament. (Green, ch. 5; Taswell-Langmead, ch. 8.)

Q. What "privileges" of Parliament do you find recognized in the 14th century? Mention any cases in which they were infringed.

A. (1) Freedom of speech—this was established under Edward III., but was violated by Richard II. in Haxey's Case. Haxey introduced a Bill to reform abuses in the royal household, and was therefor tried and condemned as a traitor, but ultimately pardoned. Under Henry IV. the judgment against Haxey was reversed, and the King and House of Peers judicially affirmed the privilege, which was confirmed by an Act. (2) Under Henry IV. it was settled in 1407 that all money bills must originate in the House of Commons, and that the King ought not to notice matters pending in Parliament. This had been claimed under Richard II. (3) Freedom from arrest (except for treason, felony, or breach of the peace) for members and their servants and property for 40 days before and after each sitting and during the sitting—affirmed in the Prior of Melton's Case in 1315. (Taswell-Langmead, ch. 9.)

Q. What effect had the foreign policy of the Kings on the development of the Constitution in the 14th and 15th centuries?

A. Under Edward III., the right of the Commons to be consulted and to give advice on questions of war and peace, was established—chiefly because no subsidies could be lawfully obtained without their sanction; from this sprung up their right to appropriate (1353) as well as vote supplies, and to audit receipts and expenditure of subsidies. These rights were maintained under Richard II., and extended under the three Lancastrian kings to all questions of national interest. (Taswell-Langmead, chs. 8 and 9.)

Q. What were the chief measures of the Long Parliament?

A. The Grand Remonstrance, in 326 clauses, presented

to the King in 1641; it set out in detail the grievances of the nation against the King, and demanded (1) safeguards against the Roman Catholic religion, (2) securities for administration of the laws, and (3) safeguards against evil councillors. Impeachment of Strafford and others. The Act for the meeting of Parliament at least in every third year (re-enacted by 16 Car. II., c. 1). Acts to abolish the prerogative of levying customs on merchandise without consent of Parliament; ship money; the judicial powers of the Court of Star Chamber, and the Court of High Commission; compulsory knighthood; and impressment for the army; Acts restricting purveyance; and annulling recent extensions of Royal forests. Also temporary Acts that this Parliament be not dissolved without its own consent, ejecting Bishops from the House of Lords, and depriving clergymen of all temporal jurisdiction. (Taswell-Langmead, ch. 14.)

Q. What are the modern functions of Parliament?

A. Taxative, legislative, judicial, and deliberative. It may be called The Grand Inquest of the nation—for it discusses all matters of national or imperial concern, it criticises the conduct of ministers, it may address the Crown on matters of general policy, it institutes inquiries in the public interest into the conduct of public bodies or persons, it may bring a political offender to justice by impeachment, and all grievances may be discussed there. Nowadays, the last sentence is peculiarly applicable to the House of Commons, though it applies to the House of Lords.

Q. Mention the chief statutes relating to the (a) *duration and* (b) *intermission of Parliament.* (c) *What are the securities for annual sessions of Parliament?*

A. (*a*) The duration of Parliament was limited by the Triennial Act 1694 to 3 years, but extended by the Septennial Act 1716 to 7 years unless sooner dissolved, and this is the present rule. (*b*) 4 Edward III., c. 14 (1330),

directed a Parliament to be held every year, once and more if need be; repealed by the Statute Law Revision Act 1881. 16 Charles I., c. 1 (1640), provided that if the King omitted to call a Parliament for 3 years the peers could do so, and failing the peers the constituencies could elect a House of Commons for themselves; this was repealed by 16 Charles II., c. 1., which laid down that the sitting and holding of Parliament should not be intermitted beyond 3 years, and was repealed by the Statute Law Revision Act 1887. The statute now in force is 6 & 7 William & Mary, c. 2, which simply enacts that Parliaments shall not be intermitted more than 3 years. (*c*) The real securities for annual sessions are the need for an annual Appropriation Act to authorize payment of two-thirds of the national liabilities, and for an annual Army Act; and that income tax which is only imposed for a year would cease to be legally payable, though about four-fifths of the national revenue, being permanent taxation, would still be collected. (Dicey, 42; 1 Anson, 68, 273.) 1910. Parliament Bill 5

Q. Mention the chief steps by which Parliament obtained the exclusive right to tax.

A. Magna Charta (1215) stipulates that scutages and aids shall not be imposed on free landholders and the City of London except *per commune concilium regni* (consisting of the archbishops, bishops, earls, and greater barons, summoned individually, and all other tenants *in capite* summoned through the sheriff of each county, 40 days before the sitting), thus surrendering the royal claim to arbitrary taxation, and laying down the principle that the nation must not be taxed without its own consent. By the *Confirmatio Chartarum* (25 Edward I.) in 1297 no aids, tasks, and prizes are to be taken except by the common consent of the realm and for the common profit; and thenceforth the Crown asked Parliament for the assent of the nation to its financial proposals. The right of tallage

on towns was given up by a statute of 1340. The King still claimed the prerogative of regulating trade and of levying impositions at pleasure on imports and exports; in 1340 a statute fixed the tax on wood; from 1373 Parliament regularly granted tunnage and poundage on wine and merchandise, but did not prohibit the Crown from raising the rates. James I. levied impositions on tobacco and currants; in Bate's Case (the Case of Impositions in 1606), it was held that the prerogative was valid, and James then issued a Book of Rates imposing increased duties on merchandise, against which the Commons offered an ineffectual remonstrance in 1610; but Impositions were abolished by the Long Parliament in 1640. Charles I. claimed the arbitrary right to impose direct taxation in the shape of Ship Money; in Hampden's Case it was decided that the Crown's claim was valid, but the Long Parliament in 1640 declared the claim illegal. Finally, the Bill of Rights enacts that levying money for the Crown by prerogative without consent of Parliament is illegal.

Q. Describe the procedure in calling a new Parliament. To whom are the writs addressed?

A. A Royal Proclamation is issued under the great seal, dissolving the present Parliament and calling a new one, and ordering the Chancellors of Great Britain and Ireland to issue the needful writs. The writs issued from the Crown Office are addressed: (1) to each temporal peer by name, commanding him on his faith and allegiance to attend to treat and give his counsel; (2) to each spiritual peer, commanding him on his faith and love to attend to treat and give his counsel, and to forewarn his dean and archdeacons to attend in person, and his chapter to send one proctor, and his clergy two proctors, to assent to what is agreed on; (3) to each Irish peer, reciting the fact of his election; (4) to the Judges of the High Court, the Attorney and Solicitor General, and the Queen's ancient serjeant, to

attend to treat and give advice; (5) to each returning officer of a place entitled to elect members, to cause election to be made and certify the name of the person elected. A Scotch peer sits under a return by the Lord Clerk Register of the 16 peers elected by the peers of Scotland under a Royal Proclamation. (1 Anson, ch. 4.)

Q. Describe the present constitution of the House of Lords.

A. The House of Lords is composed of: (1) the hereditary peers of the United Kingdom; (2) hereditary peers who are not hereditary lords of Parliament, comprising (*a*) the 16 representative peers of Scotland elected by the Scotch peers for each Parliament, and (*b*) the 28 representative peers of Ireland elected by the Irish peers to sit for life; and (3) peers who are lords of Parliament for life, but transmit no peerage or lordship of Parliament to their heirs, *i.e.*, (*a*) the 26 spiritual peers, and (*b*) the 4 lords of appeal in ordinary. Only British subjects can be members of the House of Lords; and bankruptcy, infancy, felony (until after punishment or pardon), sentence of the House, and refusal to take the parliamentary oath or affirmation, are disqualifications. (1 Anson, ch. 6.)

Q. What is your view as to the origin of the peerage?

A. It originated in tenure by barony; Magna Charta added the qualification of a personal summons; under Henry III. and Edward I. baronies by writ superseded baronies by tenure; in 1387 a barony was first created by letters patent. In 1858 it was laid down in the Wensleydale Peerage Case that the Crown cannot create a life peer with power to sit in Parliament; but by the Appellate Jurisdiction Act 1876 4 judges can be made life peers. In 1861 it was held in the Berkeley Peerage Case that baronies by tenure have long ceased to exist. A peer is now created by letters patent containing a limitation to heirs, male or female, and followed by a writ of summons. The estate of the baronage was ultimately constituted and defined, not by birth or

tenure, but by the exercise of the prerogative in issuing a writ of summons. (1 Anson, ch. 6.)

Q. How may peers be created? How are they tried?

A. By the issue of letters patent and a writ of summons to Parliament, at the pleasure of the Crown; but (1) no new Scotch peer can be created by the Crown, and (2) a new Irish peer can only be created to raise the total number to 100, or so long as the total exceeds 100, for each three that become extinct, and (3) the Crown cannot create a life peer who can sit in the House of Lords without express statutory authority or he be a bishop, and (4) a new peerage may be made to devolve differently to Common Law limitations. (1 Anson, ch. 6.) For treason and felony, a peer of noble blood (not a spiritual peer only) *must* be tried by the House of Lords, or if Parliament is not sitting, the Court of the Lord High Steward; for misdemeanours, he is tried by the ordinary Courts (Reg. v. Cardigan, 4 St. Tr., N. S., 602).

Q. What is meant by Parliamentary privilege?

A. The discretionary authority of each House of Parliament, and the rules governing its exercise are part of the conventions of the Constitution.

Q. What are the privileges of the House of Lords?

A. (1) Freedom from arrest—except for treason, felony, or breach of the peace. (2) Individual access to the Sovereign. (3) That the most favourable construction shall be put on the acts of the House. (4) Right to vote by proxy, suspended by a Standing Order of 1868. (5) Right of a dissentient peer to enter his protest on the journals of the House. (6) Right to try claims to any existing peerage on a reference from the Crown, and to try the validity of any new peerage intended to give a right to sit and vote in the House. (7) Right (if not spiritual or life peers) to try a peer for treason and felony, and to try impeachments, and to act as a final Court of Appeal. (8) Right to be summoned to the House. (9) Right to regulate its proceedings,

and exclude disqualified persons, and demand the attendance of its members. (10) Right to punish a breach of privilege by committing for a definite time not ended by prorogation. (11) Right to refuse to serve on a jury. (12) The House does not demand its privileges. (1 Anson, 225-232.)

Q. What have been the chief cases of conflict between the two Houses of Parliament?

A. In 1407, the Commons asserted that their liberties were prejudiced by the request of Henry IV. that they would attend the Lords to be instructed on the reasons for granting subsidies, and established the rule that no grant should be reported to the King by either House until passed by both. In Floyd's Case (1621) the Commons asserted* judicial power over political offenders (but at the instance of the Lords gave up the claim); although under Henry IV. Parliament had agreed that the judicial powers of Parliament do not belong to the Commons, and in 1621 the Commons had voted that they had no judicial power except in cases touching their privileges. In 1640, the Lords voted that supplies should be granted before discussion of grievances, but the Commons voted this was a breach of their privileges. In Skinner v. East India Co., the Lords in 1667 claimed an original jurisdiction as a Court of Justice; this was opposed by the Commons; after a quarrel, lasting 15 months, all the proceedings were expunged from the Journals, but the Lords have not exercised original jurisdiction in civil suits since. In 1671 the Lords tried to reduce a tax, but the Commons declared the Lords could not amend Money Bills. In 1675 the Commons contended, in Shirley v. Fagg, that the Lords could not try appeals from a Court of Equity; but the Lords refused to give up their right. In 1704, the two Houses came into collision over Ashby v. White, and the case of the

* The Commons last exercised such power in Mist's Case (1721).

Aylesbury men, but a prorogation ended the dispute. In 1832 there was a collision on the Reform Bill, but the Lords gave way. In 1860 the Lords rejected a Bill to repeal paper duty, which the Commons treated as a breach of privilege. In 1872 the Lords rejected a bill to abolish purchase in the army, but it proved that the sale of offices was forbidden by statute except so far as might be authorized in the case of the army by royal warrant, and the Commons carried their point by getting ministers to cancel the royal warrant which authorized purchase. The Lords rejected Mr. Gladstone's Home Rule Bill, and were upheld on appeal to the electorate.

Q. What remedies for a conflict between the two Houses of Parliament does the Constitution afford?

A. A compromise; a dissolution; or a creation of peers. A compromise may take place upon (1) a conference between members (managers) appointed by each House—not often used now, or (2) a statement of reasons sent by the dissentient House to the other in terms until some agreement is come to, *e.g.*, on the Irish Land Act 1881. (1 Anson, 258.)

Q. On what occasions has a creation of peers been resorted to or threatened for the purpose of affecting the decision of the House of Lords?

A. Queen Anne created 12 peers in 1712 to secure the approval of the House to the Treaty of Utrecht. In 1831 and 1832, after 16 peers had been created to assist the progress of the Reform Bill, the continued opposition of the House was overcome by the permission of William IV. to Earl Grey to create as many new peers as would pass the Bill. (1 Anson, 344-346.)

Q. Give the history of the conflict between the two Houses of Parliament in regard to the great Reform Bill.

A. In 1831 a first Reform Bill was defeated in the Commons; after a dissolution, a second Bill was thrown out by the Lords. A third Bill was then passed through

the Commons and read a second time in the Lords; but on the Lords showing that they intended to remodel the Bill in committee, the Ministry resigned, but was recalled after a vote of confidence in the Commons, as no other Ministry could be formed. William IV. then reluctantly agreed to create such a number of peers as would ensure the Bill passing the Lords unmutilated; then the Lords abandoned their opposition, and the Act was passed in 1832. (1 May; 1 Anson.)

Q. What were the main defects remedied by the Reform Act 1832?

A. (1) The number of nomination or rotten boroughs enjoying the franchise—56 of these, returning 111 members, were disfranchised, 30 were deprived of one member apiece, 2 of two members. (2) Large populations had been unrepresented—26 large towns were now given two members each, and 20 towns one member; the county members were increased from 94 to 159, and the larger counties sub-divided. (3) The narrow and unequal franchise was corrected—a £10 household franchise was established in boroughs, and a copyhold and leasehold franchise in counties. (4) The excessive cost of elections was mitigated by registration of electors, establishment of convenient polling districts, and reduction of the days of polling. (1 May, 426-429.)

Q. Give a brief history of the franchise in counties.

A. The right to vote was anciently confined to the resident freeholders who attended the County Court; in 1430 it was confined to residents possessing a freehold worth 40s. a year; in 1774 actual residence in the county was made unnecessary. In 1832 the franchise was altered to 40s. freeholders by occupation or inheritance, £10 freeholders of any other kind, £10 copyholders, £10 leaseholders for 60 years, £50 leaseholders for 20 years, and tenants at £50 rental. In 1867 the franchise was extended to £5 freeholders without occupation, £5 copyholders, and £5

leaseholders for 60 years, and to all occupiers rated at £12, and to lodgers occupying unfurnished lodgings at £10 a year. In 1884 it was extended to £10 occupiers rated to the poor, and to all householders, and a service franchise was given to an employee occupying a house as part of his wages. (1 Anson, ch. 5.)

Q. What are the existing qualifications for the franchise?

A. (1) Property qualification, confined to counties. *In England*, freeholds worth 40s. a year in inheritance or by occupation; freeholds for life or copyhold, £5 a year; leaseholds—for 60 years, £5 a year; for 20 years, £50 a year. *In Scotland*, lands and heritages in proprietorship worth £5 a year; leaseholds—for life or 57 years, £10 a year; for 19 years, £50. *In Ireland*, freeholds worth £5 a year; rent-charges and leases for lives, £20; leaseholds—for 60 years, £10, 14 years, £20. (2) Occupation for 12 months before registration of land or tenement worth £10—with different rules for assessing value, for residence, and for rating in England, Scotland and Ireland. (3) A household qualification given to the inhabitant occupier of every dwelling-house on which rates have been paid for a given period, including occupiers by virtue of their employment. (4) A lodger franchise, where lodgings, value £10 a year unfurnished, have been occupied for 12 months before a certain date. (5) Burgess or freeman in a town which, before 1832, gave a qualification. (6) Freedom and livery in the City of London. (7) Membership of the Convocation of the Universities of Oxford, Cambridge, or London. (1 Anson, 97-118.)

Q. What steps must be taken to get the right to vote at a parliamentary election?

A. There must first be one of the qualifications in the previous answer. Then the property voter must make a claim to be put on the register of voters, but once on he need not make a fresh claim yearly. The occupation voter

must be entered by the overseers on the annual list of occupation voters without making any claim. The lodger voter must send in his claim to the overseers every year.

Q. Who are disqualified for the franchise?

A. Females, infants, peers, returning officers, Government employees, persons paid for election services, aliens (unless naturalized), lunatics, idiots, persons convicted of treason or felony (until after punishment or pardon), or of corrupt practices (for 7 years), or illegal practices (for 5 years), persons who receive parish relief within 12 months before the election, persons lacking the 7 qualifications set out in the last answer but one. (1 Anson, 118-121.)

Q. What class of voters would be affected by an Act embodying the principle of "one man one vote"?

A. Those who now have more than one vote. Thus, A may have a vote in one constituency as a householder, in a second as a university graduate, and in several others as a freeholder. He would be deprived of all but one.

Q. What are the principal disqualifications for sitting in Parliament?

A. Infancy, 7 & 8 Wm. III., c. 25. Lunacy or idiocy, both at Common Law and by 49 Vict., c. 16. Aliens, unless naturalized, 33 Vict., c. 14. English or Scotch Peerage, but not Irish peerage unless it carries a seat in the Lords. Holy Orders in the Established Church, the Scotch Church, and the Romish Church. A Returning Officer at an election may not sit for that constituency. Judges of the Supreme Court. Holding from the Crown a *new* office or place of profit created since 25th October, 1705; holding certain specified offices, *e.g.*, Comptroller of Navy; holding a pension, other than army or navy or civil service or diplomatic (6 Anne, c. 41.) A member who accepts any office of profit vacates his seat, but may be re-elected. (*Ibid.*) Being interested in any Government contract. A conviction for treason or felony, unless the punishment has been suffered or a pardon

obtained (33 & 34 Vict., c. 23; Mitchell's Case in 1875; Daly's case in 1895). A bankrupt may be elected, but cannot sit and vote. A conviction for corrupt practices at an election. *Extinct disqualifications* are: not taking the Parliamentary oath, non-residence in the constituency, lack of a property qualification in land, and being a member of the legal profession. (1 Anson, 76-96.)

Q. What are the rules for the conduct of debate in the House of Commons?

A. A member who is addressing the House may not (1) allude to other debates of the same session or other topics; (2) speak against a decision of the House unless he moves to rescind it; (3) allude to a debate in the other House; (4) use treasonable or seditious words, or use the Sovereign's name irreverently or to influence the debate; (5) speak offensive words against the character or proceedings of either House; (6) refer to matters under judicial decision; (7) reflect on the conduct of the Sovereign; (8) make personal allusions to members; or (9) obstruct public business. A member may be suspended for obstruction, or disregard of order; the debate may be closured at any time on a motion that the question be now put. A member who is not addressing the House must (1) keep his place; (2) enter and leave with decorum; (3) not cross the House irregularly; (4) not read books, papers, or letters; (5) keep silence and not hiss. (May's Parliamentary Practice, ch. 12.)

Q. What are the privileges of the House of Commons? How are they enforced? How far are they subject to limitation by the Courts?

A. (1) Those demanded by the Speaker (since Henry VIII.) and assented to by the Crown at the beginning of each Parliament, *i.e.*, their ancient and undoubted rights and privileges, particularly freedom from arrest, liberty of speech in debate, collective access to the Sovereign through the Speaker, and that the Sovereign will put the most favourable

construction on their proceedings. (2) Those not so demanded, *i.e.*, the right to provide for the due constitution of its own body, the right to regulate its own proceedings, the right to enforce its privileges by fine or imprisonment or (against a member) by expulsion, the right to appropriate supplies, the right to originate money bills, the right to audit public accounts, and the right of impeachment. The House enforces its privileges (1) by order to attend at the bar of the House, (2) by order that a Speaker's warrant be issued for the Serjeant to bring up the person summoned to attend, and (3) by order that a Speaker's warrant be issued to commit for contempt (Howard v. Gosset, 1842). The Courts will enquire (except as regards matters occurring within the walls of the House) into the existence and extent of an alleged privilege and its applicability to given facts, just as they would enquire into an alleged local custom; but they cannot enquire into a commitment for contempt unless the exact nature of the contempt is named in the warrant. See Ashby v. White, Stockdale v. Hansard, and Burdett v. Abbott. (1 Anson, 141-184; Broom.)

Q. Give a short history of the privilege of freedom of speech.

A. *Freedom of speech* was enjoyed under Edward III. It was violated in Haxey's Case in 1397; Haxey introduced a Bill to reform abuses in the Royal Household; Richard II. at once passed an ordinance making this treason and imprisoned Haxey; but in 1399, under Henry IV., King, Lords and Commons united in reversing all the proceedings, and a statute was passed to secure freedom of debate. After Strode's Case (1512)—who was imprisoned by the Stannary Court for trying to reform its abuses—the privilege was again fully affirmed by 4 Henry VIII., c. 8. But in Eliot's Case (1629)—a prosecution for seditious words spoken in the House—it was argued, and illegally held, that this statute was only meant to apply to Strode, and not to be a general Act despite its plain language; but 40 years later, the conviction

of Eliot was reversed by the House of Lords. Finally, the Bill of Rights 1689 declares that freedom of speech in Parliament cannot be questioned out of Parliament; and in Dillon v. Balfour, 20 L. R. Ir., 600, an action of slander against the Irish Secretary was stayed on proof that the words were spoken in Parliament. George III. dismissed officers in the army for freedom of speech in the House, but the last instance was that of General Conway in 1764. There is no more external interference; but the House may and does restrain improper language in its proceedings, by censure, suspension, commitment, or expulsion. (Taswell-Langmead, 253-258; 1 Anson, 151-161.)

Q. What is the history of the Parliamentary privilege of freedom from arrest?

A. As far back as the sixth century (Ethelbert), the members of the Witan and their servants and property were privileged from arrest (except for treason, felony, or breach of the peace) during the sitting of the Gemot, and 40 days before and after. It was recognised in 1290, and 1315, and by 11 Henry VI., c. 11, declaring the Common Law. The only exception is Thorpe's Case in 1453, in which Parliament waived the privilege, although the judges declared it to exist. Prior to 1453 it was enforced by a special statute, or by a writ of privilege from the Lord Chancellor; but Ferrer's Case (1543) is the first instance of release on a warrant from the Speaker of the House of Commons. Shirley's Case (1603) showed that the release of a member taken in execution for debt (1) made the sheriff liable to an action for permitting an escape, and (2) extinguished the creditor's right to execution. So 1 James I., c. 13, recognised as law (1) the privilege of freedom from arrest; (2) the right of either House to free a privileged person; (3) the right to punish the party making the arrest; and (4) declared that the sheriff should not be liable for an escape, and the creditor might issue a new execution as soon as the privilege

expired. By 10 George III., c. 50, actions may be commenced against members at any time, and no process therein is to be stayed for privilege, but members may not be therein arrested and imprisoned. A member is not bound to attend as a witness on subpœna, and is exempt from serving on juries.

Q. Refer to any cases on the power of the House of Commons to commit for contempt.

A. Burdett v. Abbott (1811) was an unsuccessful action of trespass against the Speaker of the House of Commons for breaking into plaintiff's house to arrest him for contempt in having published a libel upon the House. It decides that either House of Parliament has power (notwithstanding the statutes dealing with personal liberty from Magna Charta downwards) to punish a breach of its privileges by committing to prison for contempt; that such power is inherent; and that the execution of a process for contempt justifies breaking into the house of the person to be arrested. The case of the Sheriff of Middlesex decided (in 1840) that a Court of Law cannot enquire into the grounds of a commitment for contempt by the House of Commons. Howard v. Gosset (1842) decided that the House has power to order the attendance of witnesses, and to arrest for contempt if they fail to attend; and that a warrant issued by the Speaker on the order of the House has the same authority as a writ of a Superior Court, and is valid unless it appears on its face to be in excess of jurisdiction. (Broom, 961-970.)

Q. Discuss the history of the right of the House of Commons to control the publication of debates.

A. At the beginning of each Parliament the House of Commons ask, and the Crown grants, the privileges of freedom from arrest, freedom of discussion, access to the Sovereign, and that the best construction shall be put on its proceedings. Freedom of discussion involves the right to exclude strangers (which by a resolution of 1875 can be done

by the Speaker or Chairman or a vote of the House only), and to prohibit publication of the proceedings of the House. The Long Parliament was the first to forbid a member to give a copy of, or publish in print, his speeches without leave of the House. In 1738 the House voted that any publication of its proceedings was a notorious breach of privilege. In 1771 a serious conflict began between the House and the Press, in which they committed the Lord Mayor and two Aldermen of London to the Tower, for proceeding for assault against a messenger who had attempted to enforce a warrant from the Speaker against a printer of debates without getting it backed by a City magistrate. From that time reports of debates have been freely allowed, but such reports are both made and published on sufferance. At Common Law even the right of the House to order a publication of its proceedings is limited by the Law of Libel. Lake v. King decided that no action lies for defamatory matter in a petition* delivered by a private person to members; it follows that words spoken in the House, and papers circulated by order of the House among its members, are not actionable. In Rex v. Creevey (1813) a member was held liable for publication of a libel by sending a correct report of his speech in the House to a newspaper. Stockdale v. Hansard (1839) decided that if the House orders A to print for public circulation a report which defames B, the authority of the House is no answer to proceedings for libel by B against A; but 3 & 4 Vict., c. 9, annuls this decision. Wason v. Walter (1868) decides that a faithful report of a debate in Parliament published in a newspaper is not actionable at the suit of a person whose character was aspersed in the debate. (1 Anson, 155-162; Broom, 875.)

Q. Give a short history of the controversy arising out of the case of Stockdale v. Hansard.

* Chaffers v. Goldsmid, 70 L. T., 24, decides that a voter has no right of action against any M.P. for refusing to present a petition for him.

A. The Commons claimed the privilege of publishing all their own papers for the information of the nation. Reports of Prison Inspectors, containing severe remarks on a book published by Stockdale, were printed and publicly circulated by Hansard under the orders of the Commons. Stockdale sued Hansard for libel, and defendant won on a plea of justification (truth); but Denman, C.J., ruled that a resolution of the Commons could not make legal an illegal act (publication of a libel). The Commons resolved that such publications were privileged, and that persons suing, or Courts deciding against their resolution, were guilty of a breach of privilege. Stockdale brought another action, got damages, and levied execution. The Commons committed Stockdale, his solicitor, and the sheriff for contempt. But, by the Parliamentary Papers Act 1840, it was enacted that a certificate of publication by order of either House of Parliament should be a stay to all actions in respect of such publication. (Taswell-Langmead, 622.)

Q. State shortly the effect of the decisions of (1) *Stockdale v. Hansard;* (2) *the case of The Sheriff of Middlesex;* (3) *Howard v. Gosset; and* (4) *Bradlaugh v. Gosset.*

A. (1) It is no defence to an action for libel that defendant printed the libel for *public* circulation by order of the House of Commons—overruled by 3 & 4 Vict., c. 9. (2) A Court of Law cannot inquire into the grounds of a commitment for contempt by the House of Commons unless the warrant sets out what constituted the contempt. (3) The House of Commons can summon any person to attend as a witness, and commit for contempt in case of disobedience, and the Speaker's warrant of arrest has the effect of a writ from a Superior Court. (4) The House of Commons can regulate its internal procedure, and can even expel a member, and the Law Courts cannot interfere.

Q. What Constitutional questions are connected with the name of Wilkes?

A. (1) He introduced in 1776 a Bill to reform representation in the House of Commons, which comprised all the leading principles of Parliamentary reform which were advocated for the next 50 years without success, but were afterwards sanctioned. (1 May, 394.) (2) The illegality of *general warrants—i.e.*, that a warrant issued by a Secretary of State (or any other authority) to search for and seize the unnamed author, printer and publisher of a seditious libel (Leach v. Money, 1765), or the papers of such unnamed author (Wilkes v. Wood, 1763; Wilkes v. Lord Halifax), or the papers of the named author of such a libel (Entick v. Carrington, 1765), is illegal. General warrants originated with the Star Chamber; were revived by an Act of Charles II.; were continued after that Act expired in 1694; and were abolished by the foregoing decisions. The House of Commons in 1766 by resolution also declared such warrants illegal, and if any Member of Parliament was concerned a breach of privilege. Thus, the privileges of Parliament and those of every subject were vindicated against the arbitrary authority of the Crown. (Broom, 521-620.) (3) The publication of parliamentary debates in the Press, which has not been dealt with as a breach of privilege since the dispute between the House and the City of London magistrates (Crosby, Wilkes, and Oliver) in 1771. (1 Anson, 153.) (4) That, although the House of Commons can by resolution expel a member and so create a vacancy in the seat, it cannot fetter the free choice of the electorate and create a disability unknown to the law by declaring that member incapable of re-election. (Taswell-Langmead, 615, 616; 1 Anson, 172.)

Q. What Parliamentary question is connected with the name of Bradlaugh?

A. Act of Parliament requires each member of the Commons to take an oath before he can sit and vote, and exposes to a penalty of £500 on each occasion of sitting and

voting without doing so. Bradlaugh claimed to affirm, as he had no religious belief; the House allowed him to do so; but in Clarke v. Bradlaugh it was held that he could not affirm, and that the penalty could not be recovered by a common informer. He then wished to take the oath, but the House resolved that he should not be allowed, and the Serjeant was ordered to exclude him from the House until he ceased to disturb it; in Bradlaugh v. Gosset it was decided that the House can regulate its internal procedure, and the order of exclusion was valid. Bradlaugh then took the oath in an informal manner, and voted in a division: and, in Attorney General v. Bradlaugh, it was held that the Crown could recover the penalty, for he was unable to comply with the requirements of the Parliamentary Oaths Act. After a dissolution, Bradlaugh again took the oath and voted without being sued for the penalty. The Oaths Act 1888 now lays down that in all places, and for all purposes, for which an oath is required by law, an affirmation may be made by a person who objects to take the oath, because he has no religious belief, or because his religious belief does not permit him to take oaths. (1 Anson, 85-90.)

Q. What is the Constitutional interest of Ashby v. White?

A. The case illustrates the maxim *Ubi jus ibi remedium.* The House of Lords decided in 1704 on appeal, that a man, who has a right to vote at a Parliamentary election, can maintain an action for damages against the returning officer for wilfully refusing his vote, though his right was never determined in Parliament, and though the candidate for whom he offered to vote was duly elected. The decision is one of several in which the privileges of Parliament have been considered by the Law Courts; it gave rise to a furious controversy between the Lords and Commons, which was terminated by a prorogation of Parliament. At that date the House of Commons had the sole right to determine the validity of an election, and, incidentally, to try the qualifica-

tion of the electors; and the House was of opinion that any attempt to bring a case involving the right to vote before a Court of Law was a breach of privilege. The case settles that if privilege conflicts with a Common Law right, the Court can consider whether the alleged privilege is authentic, and whether it applies to the facts in issue. It should be noted that plaintiff had a legal right to vote, therefore there must be some remedy to enforce the right; that the House could give him no remedy as they could only decide if the election was valid; and thus his only remedy was by action. (See 1 Smith's Leading Cases.) Reg. v. Paty (the Case of the Aylesbury men) arose out of the same election; Paty sued White for refusing his vote *after* the Commons had resolved that such an action was a breach of privilege; the Commons committed Paty for contempt, and the Queen's Bench (by 11 to 1) refused a habeas corpus on the ground that the Commons were exclusive judges of their own privileges, and the Court could not interfere; a prorogation set Paty at liberty, and he went on with his action and won it without further interference. (Broom, 862.)

Q. What is the historical connection between the County Court and the House of Commons?

A. The machinery of the Common Law County Court of the sheriff was used from Henry II. for the choice of the persons who should assess the taxation levied by the Crown. Under Edward I. it was used to choose the members of Parliament who should represent the county, and to confirm the members chosen by the towns. Down to the Ballot Act 1872 all county elections took place in the County Court, and the identity of the member was shown by a deed to which the sheriff and men of the county were parties. The sheriff still plays an important part in county elections. (1 Anson, 16, 49.)

Q. How were election petitions formerly dealt with, and how are they now decided?

A. Under Henry IV. a statute of 1410 ordered all questions as to disputed elections to be tried by the assize judges on circuit. Under Elizabeth the Commons claimed and used the right to try such disputes. The Commons established this right under James I. in the case of Goodwin and Fortescue; it was recognized by the law courts in Barnardiston v. Soame (1674), and by a statute of 1696. From 1604 to 1868 all questions as to disputed elections were decided by the Commons—at first by a committee of privileges and elections, next by the whole House, then by trial at the bar. Under the Grenville Act (1770) the trial was by a specially selected committee of 15; the number and mode of appointment were altered in 1841 and 1848. By the Parliamentary Elections Act 1868 the trial is now by two judges of the King's Bench Division, in the place for which the election was held. (1 Anson, 163-165.)

Q. Is there any right to petition Parliament?

A. Yes, it has existed from the earliest times. In 1661 the Act against tumultuous petitioning enacted that no petition to alter matters in Church or State should be signed by more than 20 persons or delivered by more than 10 under a penalty of £100 and three months in prison, unless its contents had been first approved by three justices of the peace or a grand jury. In 1669 the House of Commons resolved that every commoner has an inherent right to prepare and present petitions to that House in any case of grievance. The petition must be in writing, and conclude with a prayer, and must be presented by a member of the House. (See Chaffers v. Goldsmid, *ante*, p. 68*n*.)

IV.—Legislation.

Q. What methods of legislation have been used in England since the Conquest?

A. (1) *Charters* issued by the King and confirmed by the Barons; used by the Norman Kings—*e.g.*, Henry I.'s Charter of Liberties in 1100, on which Magna Charta was founded. (2) *Assizes—i.e.*, edicts issued by consent of the National Council; used by the Plantagenets—*e.g.*, the Assize of Clarendon in 1166. (3) *Provisions*—under Henry III.—*e.g.*, Provisions of Oxford in 1258. (4) *Ordinances* issued by the King in Council, and of a temporary nature, or *Statutes* assented to in the absence of the Commons—*e.g.*, *Quia Emptores;* both under Edward I. (5) Statutes founded on petitions of the Commons, used under Edward III. (6) *Bills*, introduced under Henry VI. and used now. (7) *Proclamations*, extended by the Statute of Proclamations in 31 Henry VIII., which was repealed under Edward VI.; confined by the Case of Proclamations (1610) to admonishing subjects to keep the laws; now used only under Parliamentary powers. (8) By the dispensing power or the suspensing power (*ante*, pages 43, 44); both taken away by the Bill of Rights.

Q. Describe the process in legislation on petition of the Commons. To what abuses was it subject, and how were these abuses remedied?

A. In the youth of our parliamentary history, statutes were drafted and enacted by the Crown in Council on petitions by the estates of the realm. In Henry IV.'s reign it was settled that all money bills must originate in the Commons, and that the King ought not to notice matters pending in Parliament. If the petition was favourably received, the King in Council framed a law adopting it, which was put on the statute book; but sometimes the petition was forgotten, or intentionally passed over, or the law made did not accord with the petition, or was made with suspending or dispensing clauses. Many attempts to remedy these evils were made, till in 1414 (Henry V.) it was agreed that no statute should be made without the assent of the Commons;

and, under Henry VI., the Commons passed complete statutes in the shape of bills, which (if they passed the Lords) were simply assented to or rejected by the King. (Taswell-Langmead, ch. 9.; 1 Anson, ch. 7.)

Q. When was legislation by Bill introduced? What methods were previously in use?

A. Under Henry VI. the Commons introduced complete statutes under the name of Bills, which were sent up to the Lords and (if passed there) presented to the King to be accepted or rejected without alteration. For the older methods, see page 74. (1 Anson, ch. 7.)

Q. Define a statute. What is the oldest statute now in force? What is the earliest document to which the name of statute is usually given?

A. A law enacted by the Sovereign by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in Parliament assembled; it is engrossed on the statute roll; it is usually of a permanent character; it can only be altered or revoked by the same body that made it, and in the same form. The Magna Charta of King John, as confirmed by Parliament in 25 Edward I.; the Statutes Revised now begin with the Provisions of Merton in 1235. The Statute of Marlborough in 1267.

Q. Trace the course of legislation as regards a Public Bill introduced in the Commons.

A. A member gives notice of motion for leave to introduce the Bill; motion made; the member hands the Bill to the Clerk of the House, who reads the title; motion is then put without debate, that the Bill be read a first time, and be printed; and the date of second reading is fixed by order. At the second reading, the general principle of the Bill is discussed and accepted. The Bill is next sent to a Committee of the whole House, and special instructions may be given to the Committee on particular points. In Committee each clause is discussed, and a member can speak

as often as he likes. The Bill is next reported to the House, and considered by the House as amended in Committee. Then the Bill is read a third time, and ordered to be sent to the Lords. The procedure in the House of Lords is similar to that in the Commons. Finally the Bill receives the royal assent. (1 Anson; May.)

Q. Give a short sketch of the origin and procedure of Private Bill Legislation.

A. It originated in the petitions presented to Parliament in the reign of Henry IV., by a person who desired to get the law altered in his favour. Such petitions were first purely personal (*e.g.*, reversal of attainder), next local (*e.g.*, to regulate a fishery or enclose a common), and lastly of a commercial character (*e.g.*, railway, gas, and water Acts). The first class now relate mainly to naturalization, or trust estates, or divorce. The procedure is to deposit a petition for the Bill in the Private Bill office of the Commons by 21st December, with a copy of the Bill and explanatory documents; next come memorials from opponents; an examiner for each House then enquires on 18th January if the Standing Orders have been complied with; the Bill is then read a first and second time, and submitted to the Chairman of Ways and Means; it next comes before a Committee who hear arguments for and against it, and decide judicially on its merits: after this it follows the course of a public Bill, but receives the royal assent in a special form "*soit fait comme il est desire.*" (1 Anson, 276, *et seq.*)

Q. What are the respective rights of the two Houses regarding money bills? What is the procedure relating to them?

A. A Bill relating to supply must begin in the House of Commons; it needs the concurrence of the Lords, but cannot be amended by them on its way to receive the Royal Assent; such a Bill can only be introduced on a recommendation from a Minister of the Crown; and the proceedings

must be in committee of the entire House of Commons. (1 Anson, 265-270.)

Q. Describe the steps by which the Commons asserted their control over money bills.

A. In 1407 the Commons first definitely maintained the rule that all money bills must originate in the Commons, and that the King must not take notice of anything done in Parliament until it has the assent of both Houses and is regularly brought before him. In 1593 they resisted a resolution in the Lords to grant three subsidies to Elizabeth. In 1671 the Commons resolved that the Lords may not alter the amount of a rate or tax; and in 1678 that all bills of supply must begin in the Commons, and must not be changed or altered by the Lords; and later, that all bills indirectly touching taxation or supply are money bills. In 1860, after the Lords had rejected a bill to repeal paper duty, the Commons resolved that they had the sole right of granting supplies and that they regarded with jealousy the power of the Lords to reject money bills. In 1861 the financial arrangements for the year were put into one bill, and the Lords had to pass or reject it as a whole. (3 Hallam; Taswell-Langmead; 1 Anson.)

Q. Describe the business of the Committee of Supply, and the Committee of Ways and Means.

A. Committee of Supply determines how much money shall be granted to the Crown, and for what purposes. Committee of Ways and Means decides how the money so granted shall be raised—*i.e.*, by making specific grants from the revenue paid into the Consolidated Fund, and by re-adjusting taxation so as to balance income and expenditure. The grant asked for is submitted for discussion in sections termed "votes"; the votes are agreed to in Supply and reported to the House; the votes granted are provided for in Ways and Means by resolution to impose fresh taxation, ultimately embodied in a money bill (*e.g.*, the Finance Act

1894), or by grants from the Consolidated Fund, ultimately embodied in a Ways and Means (or Consolidated Fund) Act.

Q. What is the Appropriation Act?

A. An Act passed at the close of each Session of Parliament. It specifies the total grant for the year which the Treasury may issue out of the Consolidated Fund, and specifically appropriates the grant to various items, grouped in detail under the head of Navy, Army, Civil Service (seven classes), and Revenue Departments. It is necessary to authorize the payment of about two-thirds of the national expenditure each year. The payment of the remaining third is authorized in perpetuity by various statutes, *e.g.*, the civil list, interest on the national debt.

Q. What securities are there for a proper expenditure of the national revenue?

A. The entire revenue is paid into the Banks of England and Ireland to the credit of the Consolidated Fund of the United Kingdom. A grant is made by a Ways and Means Act, or the Appropriation Act. Next a Royal Order, under the sign manual, countersigned by two Lords of the Treasury, directs the Commissioners of the Treasury to authorize the Bank to transfer the sums granted to the credit of the various principal accountants as required. The Commissioners send a requisition to the Controller and Auditor General. He makes a grant of specific sums, which is served on the Bank. The Bank transfers the sums to the proper credits. The various departments spend their credits. And the expenditure is audited by the Controller General, who makes annual reports to the Commons, and these reports are examined by the Public Accounts Committee. This elaborate system is regulated by the Exchequer and Audit Departments Act 1866. (2 Anson, 303-354.)

V.—The Executive.

Q. Comment on the distinction between a parliamentary executive and a non-parliamentary executive.

A. These are the two types of representative government by an elective body. In the first type, the executive is really (though not in form) appointed and dismissed by the Legislature (or the elective portion thereof), and usually from its own members; in the second, the executive is not so appointed and dismissed, *e.g.*, an emperor and his ministers, a president and his cabinet. The first type exists in England, Italy, Belgium, and the present French Republic; the second, in the United States and the German Empire. The first is not likely to run counter to Parliament, but tends to become the creature thereof; the second may often be in conflict with Parliament, but is independent of it. Attempts to combine the two types, by allowing Parliament to appoint, but not to dismiss, the executive, have proved a failure, except in Switzerland since 1848. (Dicey, 428.)

Q. Give a short account of the evolution of the councils of the Crown.

A. At the Conquest, the Witan was changed into the *Commune Concilium Regni*—the King's feudal court attended by all *tenants in capite* three times a year for consultative, legislative, judicial, and taxative purposes; this developed into the three estates—Clergy, Baronage, and Commons—of the Model Parliament; and, finally, under Edward III., into the House of Lords and House of Commons. A *Magnum Concilium*, or council of magnates only, was often summoned for advice, and probably still survives in the technical right of each peer to personally advise the sovereign on State affairs. The *Curia Regis* was a body of permanent advisers and administrators always about the King, composed of high officers of the realm and household, and from it most of the judicial and executive departments have sprung. The *Curia*

Regis soon divided into the Court of Exchequer to assess and collect revenue, and the Continual Council—which in turn split up into the Court of King's Bench, originated by Henry II. in 1178, the justices in eyre, started by Henry I. but made permanent by Henry II., the Court of Common Pleas created by Magna Charta, and the King's Council. Then the King's Council divides into the Court of Chancery, created (Edward III.) by the Ordinance of Grace in 1348, and the Privy Council. From the Privy Council (which still exists for formal purposes) have been derived: (1) the Cabinet; (2) Court of Star Chamber, abolished in 1641; (3) High Commission Court, created 1583 and abolished 1641; (4) Court of Requests, which died a natural death in 1642; (5) Judicial Committee of Privy Council created by statute in 1833; (6) Board of Trade; (7) Committee on Education, now the Board of Education created by statute in 1899; and (8) Local Government Board.

Q. Give an account of the rise of the Privy Council.

A. It was originally the body of confidential advisers, who were in constant attendance on the King and assisted him in the performance of his daily business; it consisted of the great officers of State and of the household and of justice; it acquired special prominence in the minority of Henry III., and was fostered by him and Edward I.; its functions were practically co-extensive with the prerogative; it was a standing council of advice on administrative matters; it received, discussed, and sent to the proper Courts, petitions for relief; it exercised a large civil and criminal jurisdiction; and it assumed the power of legislating by ordinances—until, at the end of the 14th century, it was the executive. In a Committee called the Court of Requests, it acted as a poor man's Court—although, in 1598, the Court of Common Pleas decided that the Court of Requests had no power of judicature—until 1642, when it died out. In the Star Chamber it acted as a Court to enforce order until abolished in 1641.

Q. Trace the growth of the system of Party Government.

A. The party system arises from the division of the English people (and consequently of Parliament) into great political sections, which contend one against the other for control of the executive. It appears in the opposition of Puritans to upholders of the prerogative in Elizabeth's Parliaments; it shows clearly in the debates on the Grand Remonstrance in 1641. At the Revolution the Tories exalted the prerogative, and the Whigs held that the welfare of the people was the aim of all Government. The Whigs secured the crown to William III.; but he disliked Party Government, and at first divided the offices of State equally between the rival parties; this meant loss of unanimity in debate and action; in 1696 the King gave all the chief administrative offices to the Whigs, who had a majority in the Commons; in 1698, the Tories secured a majority in the Commons, but the Whigs continued in office until the election of 1705 restored their Parliamentary majority. Anne preferred a mixed ministry of the moderate men of each party; but in 1710, as the Whigs would not join in a coalition ministry, a Tory Ministry was appointed, which retained office till her death. The indifference of the two first Georges to English politics secured the principles of government by party, and of collective responsibility of ministers, so firmly that George III. could not overthrow them. (Taswell-Langmead, 527-529, 560-564.)

Q. What is meant by the Cabinet System? Describe shortly its growth, the conditions of its successful working, and the chief rules which determine the relations of Cabinet Ministers to one another.

A. A system under which the general policy of the State is determined by the advice of a definite body termed the Cabinet, which is unknown to the law but well known in fact. The Cabinet began under Edward VI., when the Privy Council was divided in 1553 into committees, and the

most important business was assigned to a Committee of State (5 Burnet's History of Reformation, 139). Whether this continued is not certain, but the Committee of State reappears in 1640. It reappears as the Cabal under Charles II., a small committee distinct from the Privy Council, with the members of which the King discussed and settled affairs of State. The unpopularity of this system led to Temple's scheme of 1679, by which the Privy Council was to consist of 30 men, representative of all interests and of most political opinions; but a committee was formed at once for foreign affairs, and within a year a committee outside the council was formed by the King. It was thus difficult to fix responsibility for affairs of State. By the Act of Settlement affairs of State were to be decided in the Privy Council, and all resolutions signed by assenting members; but this was repealed in 1705. In the 18th century the Cabinet was an indefinite body composed of members of the Privy Council; in number large and indeterminate, often consisting of an inner group of responsible advisers and an outer circle of nominal members who might be hostile to the responsible Ministers of the Crown; who did not admit their collective responsibility for the conduct of affairs; who did not own allegiance to a Prime Minister; and who did not recognize that their position depended on commanding a majority in the House of Commons. During the 19th century it was a small body of high political officers, who shared the same political opinions, and were jointly responsible for their action, and had taken the Privy Councillor's oath to advise the Sovereign and keep his counsels secret. Dicey calls it, in reality "a parliamentary executive," as, in truth, it is chosen and dismissed (indirectly) by the House of Commons, though in appearance and in name it still continues to be a "non-parliamentary executive," for it is in form appointed and dismissed by the King (428). Anson says it is not the executive, but the Privy

Council is; yet it controls and guides the executive, and contains the chiefs of the great executive departments. Its members are really selected by, and work under, a chief called the Prime Minister, who is the head of the political party having *pro tempore* a majority in the Commons. The Cabinet is a deliberative body to consider and advise how the King's government can be best carried on in all its important departments; its policy is carried out by Orders in Council or by action in the various State offices; from the Revolution of 1688 it became the motive power in the executive. The Cabinet tenders unanimous advice to the Crown, and a dissentient member must give way or go; it communicates with the Crown through the Prime Minister, who must keep the King fully informed on all points; the King must not consult others, or act apart from the Cabinet, or refuse to support it. There seems to be a tendency towards an outer Cabinet and a confidential inner Cabinet gradually developing itself. (See 2 Anson, ch. 3.)

Q. Why has Sir Robert Walpole been called the "first Prime Minister"?

A. Because his will in fact controlled the policy of the country; and it did so partly because he procured the acceptance by the King of ministers of his own choice for colleagues, and partly because he commanded a compact working majority in a Parliament that was corrupt and had ceased to be truly representative and supported him so long as he retained the ability to reward it. He established himself as Prime Minister by the gradual expulsion from the Cabinet of all who disputed his pre-eminence. But in those days a Prime Minister indicated the creature of royal favour rather than the leader selected by popular choice. (2 Anson, 125.)

Q. What is the history of the office of Prime Minister, and what are the duties belonging to it?

A. It dates from the time when the Sovereign ceased to

attend meetings of the Cabinet. In 1803 Pitt said the qualifications were "the chief weight in the Council and the principal favour of the King." Since 1832 the Prime Minister is practically chosen by the electors at a general election. He chooses and dismisses his colleagues. He is the channel of communication between the Cabinet and the Crown, and he controls the policy of the realm.

Q. How are Ministers appointed, and on what does their tenure of office depend?

A. By the Sovereign in person, by delivery of the insignia of office (seals, a key, or a staff), with sometimes a formal document under the sign manual. The offices are held during pleasure only. (2 Anson, 42.)

Q. In what relation do Ministers stand to the Crown and to Parliament respectively?

A. It is the duty of Ministers to see that Parliament loyally counsels and serves the Crown, and that the Crown strictly carries out its obligations to the nation. To outward semblance, the Sovereign and Ministers are absolutely united; each may concede to the other, but the limit is reached for the Sovereign when he becomes willing to try the experiment of a change of Government, and for Ministers when they become unwilling to bear undivided responsibility for what is done in the Crown's name. Ministers need not be at unison with the Lords, for an adverse vote of the Lords cannot destroy a Government: but they must be in accord with a majority in the Commons, or cease to exist. Each member of the Cabinet is Administrator of a Department of State, a member of the Legislature, and a confidential adviser of the Crown; and he must not run counter to his colleagues, for the Cabinet is a unity. (1 Gladstone's Gleanings, 225-244.)

Q. In what cases is a Government collectively responsible for a wrongful act committed by one of its Members?

A. On all questions relating to the executive government the Ministry are bound to act as one man. So long as all are

in unison in this way, a vote of censure on one Minister involves the fall of the Cabinet; as soon as they cease to be in unison, it is the duty of the dissentient Minister to retire before he compromises his colleagues. (Macaulay, ch. 20.)

Q. On what tenure do servants of the Crown hold office?

A. During the royal pleasure, unless the terms of appointment state it is during good behaviour. The judges, members of the Council of India, and the Comptroller and Auditor General hold office during good behaviour as regards the Crown, and during pleasure as regards Parliament. (2 Anson, 213-215.)

Q. Give some account of the history of the War Office since the Crimean War.

A. Responsibility for the Army is concentrated in the Secretary of State for War at the head of a War Office. In 1855 the control of military matters (previously split up between a lot of departments) was vested in the Commander-in-Chief (an officer appointed in 1793, when the King gave up personal control of the Army) and the Secretary of State, the latter being responsible to Parliament. In 1870 the War Office was divided into military, ordnance, and finance departments. In 1888 the War Office was rearranged into a military and a civil branch, the former being under the Commander-in-Chief as sole military adviser. In 1895 the *military side* was rearranged under five officers, viz., the Commander-in-Chief to be principal adviser of the Secretary of State on all military matters and to look after information and appointments; the Adjutant-General to deal with enlistment, training, and discipline; the Quartermaster-General to deal with food and transport; the Inspector-General of Ordnance to provide arms; the Inspector-General of Fortifications to look after barracks and forts—and each of the four officers last named was to submit proposals for the yearly expenditure of his branch and to advise the

Secretary of State on all points connected with his branch; and the *civil side* was put under the Financial Secretary to deal with financial matters and control of manufacturing departments and contracts. In 1901 a War Office Board was appointed as a consultative body to meet weekly on points affecting the War Office and the Army; it comprised the Secretary of State, the Commander-in-Chief, Adjutant-General, Director-General of Mobilization and Military Intelligence, Military Secretary, Quartermaster-General, Inspector-General of Fortifications, Director-General of Ordnance, Medical Director-General, Financial Secretary. In 1904 the report of the Esher Committee led to further changes; the War Office Board was abolished and an Army Council formed. The Council comprises the Secretary of State as responsible head, the Chief of the General Staff, the Adjutant-General, the Quartermaster-General, the Master-General of Ordnance, one civil member, and the Financial Secretary. The office of Commander-in-Chief is abolished; the country is divided into seven military districts, each in charge of a general and largely looking after itself, but all visited by an Inspector-General of the Forces, who reports to the Army Council. There is also an Imperial Defence Committee to co-ordinate military and naval operations, composed of the Prime Minister and such persons as he may from time to time summon.

Q. Compare the constitutions of: (1) *the India Office,* (2) *the Admiralty,* (3) *the Board of Trade.*

A. (1) The India Office consists of the Secretary of State and the Council of India, which consists of 15 members appointed by the Secretary of State and holding office for 10 years; the Council of India must meet once a week; the Secretary must lay before it all orders and communications affecting India, except matters of urgency or secrecy (war, peace, negotiations with other States), but he can (usually) overrule the whole Council; the Secretary must do some

things *in* Council, and other things *with* the sanction of a majority of the Council, and occasionally the action of the Secretary and Council must be approved by Parliament. (2) The Admiralty is a Council which meets once a week; it consists of a First Lord (a responsible head, who distributes the business); four Naval Lords (of whom the three seniors divide the business of the *personnel* of the Navy, movement and condition and organization of the fleet, and maritime defences, and the third is also Controller of the Navy and responsible for naval construction, dockyards, ordnance and stores); a Civil Lord (who deals with works, and with the staff of the Civil Departments); a Parliamentary Secretary (to deal with finance); and a Permanent Secretary (for discipline, promotion and correspondence). (3) The Board of Trade is really a Committee of the Privy Council dating back to 1660. It is an executive and regulative office; it is constituted by Order in Council at the beginning of each reign, and consists of a body of great officials, with a President and Secretary, both capable of sitting in the Commons; the President is the sole head of the department; it collects statistics of trade and navigation; it represents the State regulation of trade for public safety, convenience, or profit; it superintends patents, designs, and trade marks; it keeps the standards of weights and measures; it controls bankruptcy; registers companies; controls Private Bills and Provisional Orders for railways, tramways, gas, water, and electric lighting; inspects works; approves bye-laws and regulations; inquires into accidents; controls harbours, lighthouses, and sea fisheries and merchant shipping; and has a large finance department. (Anson, Vol. II.)

Q. What is the history of the office of Secretary of State? Is the Secretary for Scotland a Secretary of State?

A. The Secretary is the direct means of communication between the subject and the Sovereign. He first appears in Henry III.'s reign, when he was an officer of the household.

In 1433 two were appointed, one by delivery of the King's signet and the other by patent. In 1443, an Order in Council made him a recognized authority for expressing the King's will, and he is then styled (1476) Principal Secretary. Statutes of Henry VIII. confirm the responsibility for use of the signet, and give precedence in Parliament and Council. Since the rise of the Cabinet system, the Secretary has become a great executive officer. For nearly 100 years after the Revolution there were two Secretaries—one communicating with the northern powers of Europe, and the other with the rest of the world, Ireland, the Colonies, and the Home Office. In 1782, the northern department became the Foreign Office, and the southern the Home, Irish, and Colonial Office. In 1794, a third Secretary was appointed, for War and Colonial business. In 1854, a fourth Secretary was appointed, for War. In 1858, the Indian Secretary was appointed. The five Secretaries of State (Foreign, Home, Colonial, War, and Indian) are all appointed by the delivery of three seals (the signet, a lesser seal, and the cachet). The Secretary for Scotland was created in 1885; he is not a Secretary of State, but merely a representative for local purposes of various Government departments; he is appointed by warrant under the sign manual. (See generally, Anson, Vol. II.)

Q. Give a short account of the duties of the Home Secretary.

A. (1) He is the medium for communications between Crown and subject, *e.g.*, to communicate a war or peace or royal birth, or to receive petitions of right. (2) He maintains the King's peace—by controlling possible elements of disorder (*e.g.*, naturalization of aliens, extradition); by supervising the police; by looking after prisons, reformatories, industrial schools, and criminal lunatics; and by exercising the prerogative of mercy. (3) He has large miscellaneous

duties as to the internal welfare of the United Kingdom, *e.g.*, vivisection, mines, factories, lunatics, artisans' dwellings. (2 Anson, 227-240.)

Q. Give some account of the various duties of the Secretary of State for Foreign Affairs.

A. To receive and answer communications from individuals, from Government departments, from English and Foreign diplomatic agents; to determine the policy of England to other countries; to receive, and present to the Sovereign, representatives of Foreign States; to submit despatches and drafts of the answers to the Prime Minister, the permanent Under Secretary, and the Sovereign. (2 Anson, 292.)

Q. Give a short history of the office of Lord Chancellor.

A. Under Edward the Confessor he was the king's chief secretary and chaplain, and keeper of the royal seal. Under Henry III. he was forbidden to seal any writ which was not *de cursu* without leave of the Council, and this clause in the Provisions of Oxford seems permanently to have checked any development of the Common Law. Under Edward I. he was a great political officer, head of the *officina brevium*, and administrator of the king's grace. In 1348 he was empowered by Edward III. to decide matters of grace, and this was the origin of the Court of Chancery. He is appointed by handing him the Great Seal. He is Speaker of the House of Lords, a judge, appoints the High Court judges, justices of the peace, and County Court judges, and to Crown livings. He is Chancellor of Great Britain only, and must not be a Roman Catholic.

Q. What is the Treasury?

A. A Board constituted by letters patent to execute the office of Treasurer of the United Kingdom. It comprises a First Lord (who is usually the Prime Minister and has a large patronage), the Chancellor of the Exchequer, and a number of Junior Lords. The Chancellor of the Exchequer

is appointed by a separate patent and by handing him the Exchequer Seals, and he is really a Minister of Finance. He fixes what money Parliament shall be asked to grant each year, submits plans for raising such money, represents the Treasury department in the House of Commons, and sits judicially in the King's Bench Division once a year to select a list from which sheriffs are appointed. The Junior Lords are general assistants and Government whips. There is also a permanent staff of clerks who cannot sit in Parliament.

Q. What are the duties of the Law Officers of the Crown?

A. They act as legal advisers to the Crown, the Ministry, and the Government Departments. They sit in the House of Commons. They are Members of the Ministry (though never in the Cabinet), and go out of office with it. They are the recognized chiefs of the Bar.

Q. What are the functions and powers of the Charity Commissioners?

A. They are appointed under the Charitable Trusts Act 1853—to protect property held in trust for relief of the poor, advancement of learning, spread of religion, or other public purposes; to inquire into the application of such property; to cheapen legal proceedings; and to reform charities to other similar objects. There are eight of them. They can advise charity trustees, appoint new trustees, sanction dealings with charity lands, and vest charity property in official trustees.

Q. Trace the growth of the doctrine that ministers are responsible to the House of Commons.

A. Ministerial responsibility means (1) their liability to lose office if they cannot retain the confidence of the House of Commons, and (2) their personal liability in a Court of Law to civil or criminal proceedings for every act of the Crown in which they take part. When the discussion of the policy of the kingdom passed from the Privy Council to the smaller inner circle of advisers (now called the Cabinet)

under Charles II., the monarch presided both in Cabinet and in Council; thus the personal opinions of Charles II., William III., and Anne, were important factors in settling such policy. George I. abstained from Cabinet and Council meetings altogether, and subsequent monarchs have abstained from Cabinet meetings. The result is that from George I. ministers have governed through the instrumentality of the Crown, instead of the King ruling by his ministers as his agents. But ministers who determine policy are answerable for it. In 1741 Walpole resigned office because of an adverse vote in a Committee of the House sitting on an election petition; in 1783 Shelburne resigned because of an adverse vote on the Peace of Versailles; prior to 1830 no ministry resigned because it was beaten on a question of legislation or of taxation. Since the Reform Act 1832, an adverse vote of the Commons on any matter which the Cabinet has chosen to regard as vital has been the ordinary mode of ending the existence of a ministry; from 1867 to 1900 there were eight changes of ministry, of which half were the immediate result of a general election. (2 Anson, 136-138.)

Q. What is the nature and extent of the control exercised by the House of Commons over the executive?

A. (1) By a Committee of Inquiry, as to the working of a department, the propriety of bringing new matters under the control of the executive, the causes of a disaster, or the conduct of an individual—limited in practice (with exception of the Crimean Committee of 1855) to matters already finished. (2) By an address to the Crown, for removal of some executive officer (*e.g.*, a judge) adopted on petition, or motion by a member, or report of a Select Committee. (3) As to the spending departments, by Committee of Supply to vote money, by Committee of Ways and Means to raise money, and by the audit of public accounts. (4) By impeachment. (5) By a vote of want of confidence in the Ministry, forcing a resignation or a dissolution. (Anson, Vol. I.)

Q. Give a short history of the right of impeachment.

A. Impeachment is a judicial proceeding in which the Commons are prosecutors, and support their charges by evidence, and the Lords are the sole judges. It first occurs under Edward III., in 1376, when Lords Latimer and Neville, and four commoners were impeached, convicted, and punished, for: (1) removing the staple* from Calais, where Parliament had fixed it; (2) loans to the King at exorbitant usury; and (3) buying old Crown debts for a small price and paying themselves in full out of the Treasury. In 1386 Michael de la Pole was impeached and punished for abuses of administration as Chancellor. No impeachments occur from Richard II. to 28 Henry VI. (1449), when the Duke of Suffolk was proceeded against (? by a Bill of Attainder); and thence attainder seems to have supplanted impeachment, until the latter was revived under James I. In 1621 Mompesson and Mitchell were punished for fraud and oppression under their patents for making gold thread and licensing and inspecting taverns; next came the Judge of a Prerogative Court for corruption, and a Bishop for brocage of judicial bribery; in 1621 came Lord Chancellor Bacon for corruption, and in 1624 the Lord Treasurer for bribery. From 1621 to 1688 about 40 cases occurred; under William III., Anne, and George I., 15; under George II., only Lord Lovat's case for treason in 1746. (See, for the chief cases, Taswell-Langmead, notes on 543-548.) The last cases were Warren Hastings in 1786 for misgovernment in India; and Lord Melville in 1804 for alleged malversation in his office.

Q. Give a short account of Danby's impeachment.

A. He was charged, in 1679, with writing a letter to the English Minister at the French Court, only five days after

* The staple towns were 16 towns named by Parliament, in which only could dealings take place in wool, sheepskins, leather, lead and tin, and had special courts for use by the merchants who resorted there.

an Act had been passed to raise supplies for carrying on the war with France, empowering him to make an offer of neutrality between France and Holland for 6,000,000 livres. The letter was unwillingly written by command of Charles II. who subscribed it "This letter is writ by my order, C. R." The impeachment established the principle that no Minister can shelter himself behind the throne by pleading obedience to the orders of his Sovereign, but is answerable for the legality of all measures emanating from the Crown—thus making the executive subordinate in all great matters of policy to Parliament. The Lords declined to commit Danby to the Tower on the general charge of "traitorously" writing, and (though they did ultimately commit him) their opposition checked the practice of *general* impeachments. Danby pleaded a pardon from the King, but the Commons resolved that a pardon was no bar to an impeachment; this was again voted in 1689, and is now a provision in the Act of Settlement; but, of course, the King can pardon after judgment. The case confirmed the right of spiritual peers to take part in proceedings in capital cases in the Lords, until the Court proceeds to the vote of guilty or not guilty. The question whether an impeachment abates on the prorogation or dissolution of Parliament was raised, and the Lords resolved that it does not, but continues right on till judgment; consequently Danby was in the Tower without bail for five years, until the Lords, in 1685, to secure the escape of the papist Lords then under impeachment, annulled their previous resolution; but in 1781 the original resolution was restored by votes of both Houses in Warren Hastings' case, and special Acts were passed to continue both Hastings' case and Melville's.

Q. Sketch concisely proceedings by impeachment.

A. A motion for impeachment must be made and carried in the Commons; then the mover attends at the bar of the Lords, and impeaches the accused in the name

of the Commons; a committee of the Commons draws up articles of impeachment, which are delivered to the Lords and the accused; the accused may deliver an answer; the accused is arrested; the Commons appoint managers to prosecute; the trial is a criminal trial, in Westminster Hall, before the Lords as judges; the verdict is by vote, the youngest peer first; the Commons then demand judgment; the accused is heard in arrest of judgment; sentence; and the Crown may pardon or mitigate the sentence. (1 Anson, ch. 10.)

VI.—Colonies and Dominions of the Crown.

Q. What were the terms of the Union with Scotland, and how was it brought about?

A. From the accession of James I., the Crowns of the two kingdoms were held by the same person, except during the Commonwealth period. But the oppressions of James II. induced the Scots to join in the Revolution of 1688. William III. called a convention of the Scots Estates, who passed a resolution (after specifying 15 breaches of the Constitution) that James—a Papist, having acted as King without taking the oath required by law, and having invaded the fundamental Constitution of the kingdom, and having altered it from a legal limited monarchy to an absolute despotic power, and having used such power to subvert the Protestant religion, and violate the laws and liberties of the kingdom—had forfeited his right to the crown, and the throne had become vacant. A declaration and claim of right was drawn up, and a resolution to offer the crown to William. The Convention passed an Act turning itself into a Parliament; and then passed many Acts, including one by which a prisoner must be released on bail within 24 hours,

and brought to trial within 60 days. In 1704 the Scotch Parliament enacted that, on Anne's death without issue, the Estates should choose a ruler other than the King of England, unless first England secured independence, authority of Parliament, and freedom of religion and trade to Scotland. The English Parliament retorted by an Act prohibiting the importation of Scotch coal, linen, and cattle. This Act caused the negotiations for the Union. By 6 Anne, c. 11, it was enacted: that from 1st May, 1707, England and Scotland should be united as Great Britain; that the crown of Great Britain should devolve on the Protestant issue of Sophia; that trade privileges should be identical; one seal should be used; coins, weights, and measures should be alike; one Parliament, with 16 Scotch peers and 45 commoners elected for each Parliament; no new Scotch peers to be created; the Episcopal Church of England and Presbyterian of Scotland should be for ever established; for £2,000,000 raised in England by land tax, Scotland should raise £48,000, &c. (3 Hallam, ch. 17.)

Q. Give a brief sketch of the relation of Ireland to England between the reign of Henry II. and the passing of Poyning's Law.

A. At the Conquest, under Henry II., Ireland was in five provincial kingdoms, and one of the five Kings was elected King of Ireland for defensive purposes; the Constitution was federal; primogeniture was unknown; chieftainships descended by "tanistry" to the most worthy eldest blood relation; land was held by Irish gavelkind, the tribal chief making a fresh division of all the tribal lands on the death of each landholder; each tribe had its Brehon (judge); murder was punished by a fine; the common people were practically slaves; the chief took coshery (food) and bonaght (quartering mercenaries) at will. Ireland was conquered by English barons, and was nominally annexed to the English crown, which established an administration in Dublin, and granted

the land to ten English families in feudal tenure. In the 13th and 14th centuries the English aristocracy of Ireland held counties palatine, and were independent in all but name. The natives, who had bargained with Henry II. for their own laws, were treated as outside the pale of English justice. The administration was in a lord deputy with a council of judges and officers; a Parliament had to be called to grant a subsidy or pass a statute; the earliest statutes are in 1310. The English settlers gradually took the language, dress, and habits of the Irish; which was prohibited by a statute of 1367. In the 14th and 15th centuries English authority lost ground, and, under Henry VII., was practically confined to the "pale" (from Dublin to Dundalk and about thirty miles inland). *Poyning's Law* (an Irish statute of 1495) enacted that private hostilities were illegal, that inciting the Irish to war was treason, that murder should be punished judicially, that town dwellers should not be retainers of lords, that aldermen and freemen must have served apprenticeships, that coshery and bonaght should be illegal, that judges should hold during pleasure and not for life, *that all English statutes prior to* 1495 *should prevail in Ireland, and that no Irish Parliament could be held or pass any law without the prior licence of the Crown.* (3 Hallam, ch., 18; 2 Anson, 211.)

Q. Sketch the relation of Ireland to England from Poyning's Law to the Revolution.

A. Under Henry VIII., the lordship of Ireland was converted into a kingship; an Irish Act of Supremacy was passed, and the English liturgy ineffectually ordered by a proclamation. Under Elizabeth, the statutory establishment of the reformed religion led to incessant rebellions. Under James I., the laws against Catholics were enforced; English law was established throughout Ireland; tanistry and gavelkind were abolished; a second settlement of English colonists was made in Munster and Ulster; Ireland was treated as a

subordinate Kingdom (with Parliament, laws, and liberties, almost like the English) and not as a conquered country or colony. Under Charles I., oppression caused the Rebellion of 1641, put down by Cromwell with ruthless severity. The Revolution of 1688 caused a three years' war, followed by rigorous repression of Papists. (3 Hallam, ch. 18.)

Q. Give a short history of the controversy in the 18th century as to the power of the English Parliament to legislate for Ireland.

A. English Statutes, passed after Poyning's Law, did not bind Ireland unless adopted by the Irish Parliament. From 1641 the Irish protested against the power of the English Parliament to bind Ireland, even by the use of express words. In 1719, a decision of the Irish Courts was reversed by the Irish House of Lords and restored by the English House of Lords. The Irish Parliament then resolved that no appeal lay from the Irish Lords to the King in Parliament in Great Britain. This was met by an English Act of George I. (1720), which declared that the English Parliament could pass Statutes to bind Ireland, and that no appeal lay from any Irish Court to the Irish House of Lords. In 1753, a patriotic party sprang up in Ireland, and the Irish House of Commons ineffectually asserted its right to dispose of surplus revenue. (3 Hallam, ch. 18.) The above Act of 1720 was repealed in 1749, and by 23 George III., c. 28, it was enacted (1783) that the Parliament and Courts of Ireland should have an exclusive right to all matters of legislation and judicature in Ireland.

Q. What were the relations of the English and Irish Parliaments in the reign of George III.?

A. At the accession of George III., in 1760, the Irish Parliament was exclusively Protestant; five-sixths of the people, being Papists, were disfranchised; the Protestant landowners were called "parliamentary undertakers," for their influence could nominate a majority in the Commons;

corruption was universal; Papists were excluded from all offices and professions; Dissenters fared little better; Parliament lasted until the demise of, or a dissolution by, the Crown. In 1768 an Act was passed for octennial Parliaments. 23 George III., c. 28, gave the Irish Parliament and Courts that exclusive right to Irish legislation and justice, free from control of the English Parliament, for which they had long striven. In 1785 Pitt's proposals to free Irish trade were accepted by the Irish, but rejected by the English, Parliament. In 1792 Papists were allowed the franchise. The struggles for free trade and religious fanaticism led to the Rebellion of 1798, after which self-government appeared impracticable, and finally 1¼ millions spent in bribery carried the Union in the Irish Parliament. (3 May, ch. 16.)

Q. Describe the Irish Constitution immediately before the Union. What were the principal Articles of Union?

A. It exactly resembled the English Constitution, with Parliament and Courts having exclusive jurisdiction in Irish affairs. The Act of Union is 39 & 40 George III., c. 67 (Irish Act, 40 George III., c. 38). The chief Articles were: (1) That on 1st January, 1801, Great Britain and Ireland should become the United Kingdom of Great Britain and Ireland; (2) the Crown of the United Kingdom should devolve as before the Union; (3) there should be one united Parliament; (4) 28 Irish peers should be elected for life to sit in the House of Lords, and 100 Irish members to sit in the House of Commons; (5) privileges of trade, navigation, and treaties, should be the same; (6) English and Irish Churches to become the United Church of England and Ireland, but Scotch Church to be as before; (7) future expenditure of United Kingdom to be settled by Parliament, subject to certain rules; (8) all existing laws and Courts to continue until altered by Parliament, but appeals to the House of Lords to go to the United House of Lords.

Q. What do you understand by a British Colony?

A. Any British dominion except the British Islands and British India (52 & 53 Vict., c. 63).

Q. How have Colonial Constitutions been created? When was responsible Government introduced into the Colonies?

A. Either by the Crown in Council, or by an Act of the Imperial Parliament. In Canada, really (after the rebellion of 1838) in 1840; but in the Dominion of Canada, in 1867 by the British North America Act. In New Zealand in 1852; in Newfoundland, New South Wales, and Victoria in 1855; in Tasmania, and South Australia in 1856; in Queensland, 1859; in the Cape of Good Hope, 1872; and in West Australia, 1890. The Commonwealth of Australia was created in 1900 by an Imperial Statute (*ante*, p. 29).

Q. How can you classify Colonial Constitutions?

A. (1) Colonies where both legislative and executive powers are vested in the Governor alone, *e.g.*, Gibraltar. (2) Colonies where government is carried on by a Governor and Executive Council, and laws are made by a Governor and Legislative Council, but both Councils are nominated by the Crown, *e.g.*, Mauritius, Ceylon, the Gold Coast. (3) Colonies with an Elective Legislature and a nominated Executive Council, *e.g.*, Jamaica, Barbados, Malta. (4) Colonies with responsible Government, *e.g.*, Canada, Australia. (2 Anson, 264.)

Q. What means are there of asserting imperial control over the Colonies, and on what principles is it exercised?

A. The Imperial Parliament can legislate for all Colonies. A veto can be exercised on all Colonial legislation, by the Colonial Governor or by the Crown in Council. Until legislative powers are given to a colony, the Crown legislates for it by Orders in Council. If a Legislative Assembly is granted to a colony, the power to legislate for it by Orders in Council ceases unless expressly reserved. (Campbell v. Hall.) Appeals from Colonial Courts go to the

Privy Council. By the Colonial Laws Validity Act 1865, a Colonial Statute which is repugnant to the law of England on the same point is valid, unless it conflicts with a law passed by the Imperial Parliament and declared to extend to the Colonies. The policy of the Imperial Government is to interfere as little as may be with the local affairs of a colony. (2 Anson, 264-279; Dicey, ch. 2.)

Q. When was responsible Government introduced into Canada? Contrast the Constitutions of Canada and the United States.

A. By the British North America Act 1867, which recites that the provinces desired to be united into a dominion "with a Constitution similar in principle to that of the United Kingdom." So far as the Canadian executive is concerned, the Constitution is modelled on the English type of Parliamentary Cabinet Government, and is quite different to the Presidential Government of the United States. But the Canadian Constitution, when regarded as a Federal Government, closely resembles that of the United States, for each has a written Constitution; each can be altered only by a special outside body—in the one case the Imperial Parliament, in the other three-fourths of the Federal States; and in each case the Courts become the interpreters of the Constitution. (Dicey, 161.)

Q. (1) *What are the chief rules as to the laws in force in conquered, and ceded, Colonies?* (2) *What was decided in Campbell v. Hall in* 1774?

A. (1) Such Colonies fall at once under the legislative powers of the Crown in Council; but Parliament can legislate for them, and the Crown may not make laws contrary to the fundamental principles of English law. Colonies acquired by settlement (occupancy) could not be legislated for by the Crown in Council, unless specially so provided by statute. By the British Settlements Act 1887 the Crown now has full power to legislate and establish Courts in all new settle-

ments. (2) That the Crown having granted a representative assembly to a colony for legislation (including taxation) cannot afterwards legislate (or tax) by Order in Council, unless the power to do so has been expressly reserved. (2 Anson, 274-276.)

Q. Is a Colonial Governor liable to civil or criminal proceedings?

A. Yes. It is now settled that a Colonial Governor may be sued both in England and in the Courts of his Colony during his governorship (Hill v. Bigge, 1841), and held liable for unauthorised acts (Mostyn v. Fabrigas, 1775; Phillips v. Eyre, 1870). He does not possess general sovereign power, but only an authority strictly limited by the terms of his commission (Cameron v. Kyte, 1835). But he is not liable in any court for an Act of State done by him within his legal authority (and it is within the jurisdiction of Municipal Courts to decide what is such an Act of State, Musgrave v. Pulido, 1880); he is not liable personally on contracts made in his official capacity; and for his judicial acts he has the same immunity as other judges (Anderson v. Gorrie, 1894). By 11 William III., c. 12, a Colonial Governor can be tried in the King's Bench, or by special commission, for all crimes committed by him; and in Rex v. Wall (1802) a Colonial Governor was hanged for murder caused by excessive corporal punishment of one of his garrison. Rex v. Pinney (1832) decides that a Governor, when called on to suppress a riot, is bound to hit the exact line between excess and failure of duty, and the difficulty of so doing or honesty of intention affords him no legal defence. (Broom, Part III.)

Q. What is meant by an Act of State? What was decided hereon in Buron v. Denman? Contrast that case with Entick v. Carrington.

A. An *Act of State* means (1) an act done or adopted by the rulers of any foreign independent State in their political and sovereign capacity, and within the limits of their *de*

facto political sovereignty; or (2) an act injurious to the person or property of some one who is not at that time a British subject, done by a civil or military officer of the Crown out of British dominions, and duly sanctioned or ratified by the Crown. In the second meaning, such an act is a *casus belli;* but it does not apply to British India, for the inhabitants are British subjects, though it does apply to the Native States of India. Buron v. Denman (1847, 2 Ex., 167) is a leading case on Acts of State; it decided that a Spanish subject could not sue a naval captain here for destroying his buildings and releasing his slaves in Africa, because the Secretary of State had ratified such acts by a formal letter approving them. Entick v. Carrington (1765, 19 St. Tr., 1043) shows that there is no such thing as an Act of State between a sovereign and his subjects, *e.g.*, if one British subject kills another, the express command of the King would be no protection to the slayer unless the killing is in itself lawful, and it is the duty of the Law Courts to decide whether it is lawful or not; the case decides that a Secretary of State has no power to issue general warrants to search for and seize papers, and that such a warrant does not protect the messenger who executes it against an action for damages. (2 Stephen's History of Criminal Law, 61-65.)

Q. How is British India governed?

A. By the Emperor of India on the advice of the Indian Secretary with the help of the Council of India (*ante*, p. 86). The Indian Executive consists of the Governor-General and an Executive Council nominated by the Crown; the Governor-General has both a single vote and a casting vote, and can overrule the decision of the Council, but must take the orders of the Indian Secretary. The Legislature consists of the Governor-General and his Executive Council, with the addition of from 10 to 16 persons nominated by the Governor-General.

VII.—Revenue and Taxation.

Q. What were the sources of the Royal revenue in the time of Henry I. (1100 *to* 1135) ?

A. (1) Ancient national payments which required no new authorization, comprising : (*a*) the ferm of the shire, *i.e.*, the rent from public land and royal demesnes ; (*b*) Danegeld, a tax of 2s. on each hide of land for national defence ; (*c*) the fines of local courts. (2) New feudal aids, reliefs and other payments, for which Parliamentary consent was not needed unless an extraordinary gift was demanded. (3) The demesne lands of the King and the towns were liable to arbitrary tallage, until this was surrendered by Edward I. (4) Indirect taxation, *i.e.*, prisage (which meant 2 tuns of wine from every ship importing over 20 tuns, and was changed by Edward I. into butlerage, a payment of 2s. on each tun) and customs on imports and exports. (5) Proceeds of the royal justice. (6) Miscellaneous revenue, *e.g.*, treasure trove, sale of offices, purveyance. (Taswell-Langmead, 126.)

Q. What changes in taxation took place under Henry II.?

A. All classes of people and all kinds of property were taxed. Scutage was introduced as a land tax paid by all tenants in chivalry, in lieu of personal military service, at the rate of 20s. for each knight's fee. Danegeld was dropped ; but revived as donum or hidage (changed by Richard I. into carucage), a tax levied on all holders of land of whatever tenure. Income and personal property were first taxed by Henry's Ordinance of the Saladin Tithe in 1188 ; to ransom Richard I. every person was made, in 1193, to pay a fourth of his income or goods ; John, in 1203, took a seventh of each baron's goods, and, in 1207, a thirteenth of every person's goods. (Taswell-Langmead, 127.)

Q. What were the principal sources of revenue in the 15th century?

A. (1) The ancient customs, settled in 1275 at a definite sum on wool, woolfells, and leather exported. (2) A subsidy on exported wool, confirmed by the Statute of Staples in 1353. (3) Tunnage and poundage on wine and goods exported and imported. (4) A tax on moveables of a tenth from the borough and a fifteenth from the shire, fixed at a gross sum of £39,000. (5) Income of the Crown lands. (6) Butlerage on imported wines. (2 Anson, ch. 7.)

Q. By what different means did Parliament endeavour to control the expenditure, and to check administrative abuses during the 14th and 15th centuries?

A. (*a*) By the *Confirmatio Chartarum* of 1297 Edward I. agreed that aids, tasks and prizes should not be made but by the common assent of the realm. (*b*) Under Edward III. (1327 to 1377), after many remonstrances, no tallage of the royal demesnes was made after 1332. In 1340 it was enacted that the nation should not be charged or grieved to make any common aid or to sustain charge except by Parliament. By continual remonstrances, conditional grants, and liberal subsidies, the Commons gradually established the *practice* of the right of the people to tax themselves. In 1340 the Commons established the right to examine the accounts of collectors of subsidies, which was the first step to the audit of expenditure of public money. In 1353 came the first instance of specific appropriation of a subsidy. Impeachment was introduced in 1376. (*c*) Under Richard II. (1377 to 1399) the Commons *regularly exercised* the rights that (1) no money could be levied, and (2) no laws enacted without their consent, and (3) that they could enquire into administration; and *established* the rights (1) to audit public accounts, (2) to appropriate supplies, and (3) to impeach Ministers. (*d*) Under Henry IV., in 1407, the rule that all

money bills must originate in the Commons was first asserted. (Taswell-Langmead, chs. 5, 9.)

Q. What was the duty of Tunnage and Poundage, and to what controversies did it give rise?

A. A duty on each tun of wine and pound of merchandise exported and imported. It was granted regularly after 1373 by Parliament to the King for a term of years or for life. The grant did not expressly forbid the King raising the rates of duty under the vague royal prerogative; but from Edward III. to Mary, no rates were so raised. Mary and Elizabeth did raise the rates without question. James I. did the same, and it was held in the Case of Impositions he did so rightly. Charles I. did the same, and it was held in Rolle's Case (1629) that the Petition of Right (1628) did not prevent his doing so. By 16 Charles I., c. 8, all customs duties without sanction of Parliament were made illegal. Finally the Bill of Rights abolished all claims to tax in any way without Parliamentary sanction.

Q. What was the question at issue in Bate's Case (the Case of Impositions), and how was it finally settled?

A. The prerogative claimed by James I. of levying duties on exports and imports by letters patent without the sanction of Parliament. The claim was based partly on 26 Henry VIII., c. 10, which empowered the King to regulate trade by proclamation; partly on the Stuart theory of the divine right of Kings; and partly on the statute which granted tunnage and poundage containing no express prohibition against the King raising the rates. Bate was sued in 1606 for an imposition of 5s. per cwt. on currants (beyond the statutory poundage of 2s. 6d. per cwt.); and judgment was given for the Crown—on the grounds that the King has absolute prerogative beyond ordinary powers, that foreign commerce is in the absolute power of the King, that customs on foreign produce are therefore in the same power, and that the King may impose as much as he pleases. Coke

thought the judgment correct, and the judges in 1629 (Rolle's Case) treated it as conclusive. The result was the issue of a Rate Book imposing heavy duties on all imports. Parliament ineffectually remonstrated, alleging that from the Conquest to Mary (480 years) there were only six impositions by 22 Kings, all of which were removed on complaint. The prerogative (real or doubtful) was abolished by the Bill of Rights.

Q. What were the disputes respecting taxation between the Crown and Parliament in the reigns of James I. and Charles I.?

A. The royal claim to levy indirect taxation by duties on imports without parliamentary sanction ; upheld in Bate's Case ; abolished by the Bill of Rights. The exaction of a general benevolence, after Parliament refused to vote supplies until grievances had been redressed. Charles arbitrarily exacted tunnage and poundage, compounded with recusants for dispensing with the penal laws, demanded benevolences from the rich, ordered seaports to furnish armed vessels, and demanded a general loan from every subject (refusal to pay which led to Darnel's Case, and the Petition of Right). From 1629 to 1640 Charles levied tunnage and poundage, revived monopolies, enforced knighthood, issued inquisitions into titles to land, and revived forest laws. In 1634, 1635, and 1636 ship money was levied over the whole kingdom ; and in Hampden's Case it was held (by seven judges to five that the Crown had the right to levy the tax.

Q. What were the chief arguments for Hampden in the case of Ship Money? How was it ultimately decided?

A. (1) The law had provided proper means to defend the realm—for (*a*) military tenure bound the tenants to a stipulated service, (*b*) certain seaports were bound to furnish ships and men in return for their privileges, (*c*) profits from feudal tenures were applicable for the public use, (*d*) customs on wool and leather, and tunnage and poundage, were

granted for sea defence. (2) When ordinary revenue is exhausted, Parliament can grant aids and subsidies; and the practice of loans on promise of repayment and benevolences (or alms) show there is no prerogative of general taxation. (3) A long series of Acts, ending with the Petition of Right, declare that no tax shall be levied without consent of Parliament. (4) Precedents cited for the Crown showed that inland places had never been taxed for ships. (5) There was no overwhelming necessity which might exculpate a breach of ordinary law. Judgment went for the Crown by seven judges to five. The claim of the Crown was abolished by the Bill of Rights.

Q. State accurately the grievances complained of and the redress afforded by the Petition of Right.

A. The Petition recites—that by law no taxes can be levied without consent of Parliament, yet that commissions to tax had been lately issued and enforced by imprisonment contrary to law; and that no freeman can be imprisoned without due process of law, yet lately this had been done; and that soldiers had been billeted contrary to law; and that martial law had been put in force during peace. It then prays that no man hereafter be compelled to yield any gift, loan, benevolence, or tax without an Act of Parliament, and that none be imprisoned or molested for refusing thereof, and that no more billeting take place, and that martial law be not used; to all which the King assented. (3 Car. I., c. 1.)

Q. Describe the expedients by which Charles I. endeavoured to raise taxes without consent of Parliament, and show how their legality was established.

A. See three previous questions. A subservient bench of judges, liable to dismissal at the pleasure of the King, upheld his exactions.

Q. What three forms of direct taxation were used by the Ministers of Charles II.?

A. (1) A poll tax on every person over 16 years of age. (2) Hearth money. (3) The raising of a fixed sum from towns and counties every month by an assessment of the real and personal property therein. (2 Anson, 298.)

Q. What are the present sources of the national revenue?

A. Customs, excise, stamps (on documents, and the death duties on property), land tax and inhabited house duty, property and income tax, post office, telegraphs, crown lands, and miscellaneous oddments.

Q. What is the history of the Customs?

A. Customs are duties on articles of commerce imported and exported. They were anciently paid to the King for maintaining ports and putting down piracy. *Antiqua custuma* were export duties of 6s. 8d. on each sack of wool and each 300 sheepskins, and 13s. on each last of leather, granted to Edward I. in 1275 in lieu of the "ancient and rightful customs" of Magna Charta, and reserved to him when in 1297 he surrendered his right to tax merchandise by the *Confirmatio Chartarum*. *Nova custuma* were imposed in 1303 by Edward's *Charta mercatoria* allowing foreign merchants to trade in England on payment of 3d. on each pound of imported goods, and 10d. on each sack of wool and each 300 sheepskins exported, and 2s. per tun on imported wines instead of prisage. From 1376 to 1660 the customs comprised: (1) the *custuma antiqua*, (2) *custuma nova*, (3) butlerage on imported wines, (4) a subsidy granted by Parliament on imported wool, and (5) tunnage and poundage on imported wine and goods granted by Parliament. The Acts granting tunnage and poundage did not prohibit the Crown raising the rates; Mary, Elizabeth, James I. (Bate's Case), and Charles I. all did raise the rates; but the Bill of Rights took away this power. In 1660 the customs were consolidated and comprised only: (1) tunnage, (2) poundage on imports, (3) poundage on exports, and (4) duty on woollen cloth. In 1787 a fresh consolidation took place,

and all customs were paid thenceforth into the Consolidated Fund instead of being separately appropriated. Since 1842 duty-paying articles have been reduced from 1200 to about 20, and raw materials are imported free.

Q. Give some account of the Excise.

A. Excise duty is one levied on consumable articles produced in the United Kingdom. It was started by the Commonwealth. It is now levied chiefly on beer and spirits. But since 1784 the duty on a great number of licences is included under the head of Excise, *e.g.*, licences for auctioneers, guns, game, dogs, armorial bearings, male servants, dealers in beer, wine, spirits, sweets, and tobacco. It also includes railway passenger duty.

Q. Give a concise account of the National Debt.

A. The National Debt denotes the indebtedness of the British nation to those who have lent it money. It originated under Charles II., who borrowed money from bankers in 1664, and in 1677 granted them annuities out of the hereditary excise; these annuities were not paid after 1683, and in the Bankers' Case it was held in 1690 on a petition of right that the King had power before the Revolution of 1688 to alienate the revenues of the Crown and that the bankers had consequently a right to be paid. On the accession of William III., in 1688, the National Debt was only £664,263; and the great increase after that date is chiefly due to foreign wars. In 1693 a statute authorized a loan of one million sterling to be obtained by issuing life annuities secured on new liquor duties. When William III. died, the National Debt was £16,392,702; and by 1815 it was £840,000,000. On 31st March, 1897, it was £644,909,847 and on 31st March, 1905, it was £796,736,421. It now consists of: (1) Funded Debt; (2) Terminable Annuities; (3) Unfunded Debt; and (4) Other capital liabilities, *e.g.*, under Military and Naval Works Acts. *Funded Debt* is that secured to the creditor of the State on the public funds;

and the security possessed by the creditor consists of annuities granted by Parliament (usually in perpetuity) to the original lenders, giving them a certain rate of interest on the money lent, and charged on the Consolidated Fund, which was created by a Statute of 1787 and comprises the produce of all state revenues. The stockholder has simply the right to receive a perpetual annuity, subject to redemption. *Terminable Annuities* are granted for life under the Government Annuities Act 1829, to any holder of stock in the Funded Debt in exchange for his stock, and have long been used to reduce the Funded Debt. *Unfunded Debt* consists of money borrowed under some statute temporarily on security of Exchequer bills and bonds. The National Debt is managed by (1) the Banks of England and Ireland as paid agents of the Government; (2) the Treasury, which has a general financial supervision over all State departments; and (3) Commissioners for Reduction of the National Debt, who are the Speaker, Chancellor of the Exchequer, Master of the Rolls, Lord Chief Justice, Paymaster-General of the High Court, and the Governor and Deputy-Governor of the Bank of England. *Conversion* of National Debt means reducing the rate of interest paid on it; this can only be done by statute. Thus, in 1716, Walpole converted 5 per cents. into 4; in 1749 Pelham converted 4 per cents. into 3; in 1824 and 1830, 4 per cents. were converted into $3\frac{1}{2}$, and in 1844, $3\frac{1}{2}$ into $3\frac{1}{4}$. In 1853, Gladstone passed a Conversion Act; and in 1884 Childers converted 3 per cents. into $2\frac{3}{4}$ and $2\frac{1}{2}$. In 1888 Goschen converted over 565 millions of 3 per cents. into $2\frac{3}{4}$ for a time, and ultimately into $2\frac{1}{2}$—a yearly saving of £1,450,000 until 1904, and then of twice that sum. *Redemption of National Debt* by means of sinking funds was begun by Walpole in 1716. Pitt, in 1786, set aside a million yearly out of surplus revenue to be used by the National Debt Commissioners in buying up Funded Debt; in 1829 this was extended to redemption of Unfunded

Debt, but in 1875 this Old Sinking Fund was done away with. The annual sum set aside for National Debt is now 25 millions, and as much of this as is not exhausted by the interest and management is called the New Sinking Fund, and is used for redemption of debt. In Victoria's reign the National Debt was reduced by over 116 millions. (See Encyclopædia of Laws of England, 1898, vol. 9.) In 1900 a War Loan of 48 millions was authorized to be raised by War Stock bearing interest at $2\frac{3}{4}$ per cent., charged on the Consolidated Fund, and redeemable at par in 1910.

VIII.—Army and Navy.

Q. What is meant by Martial Law?

A. (1) Originally it meant the law administered by the Court of the Earl Marshal over troops on actual service, whether in the realm or out of it. In this sense it still exists as military law providing for the discipline of the Army, and regulated by the Army Act 1881. (2) It also denotes the Common Law right of the Crown to repel force by force, in cases of invasion, insurrection, riot, or any violent resistance to law, and to act against rebels as if they were foreign invaders; though the parties must afterwards be tried by the ordinary courts of law (Wolfe Tone's Case, 1798) and all officers who have used excessive and unreasonable force are responsible both civilly (Wright v. Fitzgerald, 27 St. Tr., 765) and criminally (Reg. v. Eyre, 1867). (3) Its proper meaning is the suspension of the ordinary law and the temporary government of all or part of a country by military tribunals—which is called the " state of siege " on the continent of Europe. This can be done by the prerogative of the Crown in time of war, *e.g.*, in the Orange River and Transvaal Colonies in 1900, but it can only be done in time of war and never in time of peace; the prerogative depends

upon, and ceases with, the necessity for it. It is a question of fact whether a state of war exists. It is not necessary to issue a proclamation of martial law; it may be in force while the civil courts are sitting; it is usually followed by an Act of Indemnity (*e.g.*, at the Cape in 1902), and the sentences passed are usually revised by a Royal Commission after peace is restored.

Q. What are the duties of soldiers in domestic disturbances?

A. Soldiers have no special position in English law as regards putting down breaches of the peace; they occupy the same legal position as ordinary citizens do; all subjects equally are bound to put down domestic disturbances; all are equally authorized to use such force (even to taking life) as may be necessary for that purpose; none are entitled to use more force; all are liable to trial by jury for using unnecessary force; all are liable to prosecution for breach of their common duty to put down riots. (Rex v. Pinney, 3 St. Tr. (N. S.), 11.) Taking life is only justified by the necessity of protecting persons or property against violent crime, or of dispersing a dangerous and riotous crowd, or of dispersing or arresting felons under the Riot Act. The order of a magistrate to fire has no legal effect, its presence will not justify *per se*, its absence will not *per se* incriminate. The soldier and civilian alike are protected by the Common Law, if they do no more than is necessary to prevent violent crime, and use all ordinary skill and caution so as to do no more harm than can reasonably be avoided. (Report of Lord Bowen's Featherstone Riot Committee, 1893.)

Q. What is the constitutional position of soldiers serving in the regular army? Refer to Redford v. Birley; Rex v. Pinney.

A. As regards domestic disturbances, they are in the same position as civilians. By their contract—they are bound to serve in the army, may not resign without permission, may be dismissed at pleasure, and are subject to military law. Redford v. Birley, in 1822, was a case in

which officers and men of the Manchester Yeomanry were sued for assault, and it was held a good defence that the assault was properly committed in dispersing an unlawful assembly. Rex v. Pinney was an information against the Mayor of Bristol for neglect of duty in not promptly quelling the Bristol riots in 1831; he was acquitted, but the principles set out in the previous answer were laid down.

Q. Explain the provisions of the Petition of Right relating to martial law.

A. They declare it is illegal to quarter troops on householders without consent of Parliament—which virtually meant that if the King wanted a standing army he must pay for its keep or get supplies from Parliament: and make it illegal to issue commissions "giving power and authority to proceed within the land according to the justice of martial law"—thus preventing the maintenance of discipline in time of peace. (2 Anson, ch. 8.)

Q. What is the law relating to standing armies? How is the army at present governed?

A. The Declaration of Rights laid down, and the Bill of Rights (1 Wm. & Mary, st. 2, c. 2) enacted, that the maintenance of a standing army in time of peace without consent of Parliament is contrary to law. The existence of such an army is provided for every year, for a year, by a special statute; the first of such statutes was the Mutiny Act 1689; the latest is called the Army Act 1905. The rules for the government of the army were consolidated into a code by the Army Act 1881, which is supplemented by the Queen's Regulations and Army Orders; and these rules are every year amended and continued by an annual Army Act for a year. (The student should carefully read through the preamble to some annual Army Act.) (See Dicey, ch. 9; 2 Anson, ch. 8.)

Q. Give some account of the military forces of the Crown.

A. (1) The regular forces are divided into British, Indian, and Colonial. The annual Army Act prevents Indian troops being employed in the United Kingdom in time of peace; and as 21 & 22 Vict., c. 106, s. 55, forbids Indian revenue being spent on military operations out of India, Parliament would have to be asked for money to pay Indian troops employed out of India, *e.g.*, as at Malta in 1878. The British regular forces comprise the army, the reserves, and the royal marines; and the numbers are fixed by each yearly Army Act. An officer in the army (Vertue v. Lord Clive, 1769) or navy (*ex parte* Cuming, 1887) may not resign without leave, but can be dismissed at pleasure. A private can resign within three months after enlistment on paying £10, but not afterwards. (2) The auxiliary forces are the Militia, Yeomanry, and Volunteers. The Militia is at present raised by voluntary enlistment under the Militia Acts 1860, 1865, and 1882; but can at any time be raised by a compulsory ballot of all able-bodied men between 18 and 30, in numbers fixed as to each county by an Order in Council of 1852, and as to each parish by the Lord Lieutenant of the county. The Militia cannot be compelled to serve out of the United Kingdom; but can be embodied at any time in case of grave national danger by Order in Council, Parliament being summoned to meet within 10 days later. Yeomanry and Volunteers are raised by voluntary enlistment in Great Britain. The Yeomanry may be called out (1) to serve in Great Britain on actual or apprehended invasion, and (2) to suppress a riot. The Volunteer Act 1900 allows the volunteers to be called out for service in Great Britain in case of imminent national danger or of great emergency, and also authorizes a volunteer to enter into a special agreement to be called out at any time for purposes of coast defence in Great Britain.

Q. What is the position of a soldier (a) *as a citizen*, (b) *as a person subject to military law?*

A. (*a*) The soldier is in England subject to all the duties and liabilities of an ordinary citizen; he is liable to the same criminal and civil processes as a citizen, except that he cannot be made to appear in Court for a debt not over £30; acquittal or conviction in a Civil Court bars proceedings by Court Martial, but the converse is not true; the order of his superior officer is no defence to a charge of crime in a Civil Court, Rex v. Thomas (1816). (*b*) Enlistment is a contract, by which he becomes liable to military law as laid down by the Army Act, and can be tried by Court Martial; but the powers of a Court Martial are strictly defined by the Army Act, and any excess can be checked by the Civil Courts by writ of prohibition, or certiorari, or (as in Wolfe Tone's Case, Dicey, 289) habeas corpus (Dicey, ch. 9; 2 Anson, ch. 8.)

Q. What provisions exist for maintaining discipline in the navy?

A. The discipline of the navy was first organized by the Long Parliament; in 1661 Articles of War were drawn up for it, and (as amended in 1748 and 1749) remained in force until 1866. The permanent Naval Discipline Acts 1866 and 1884 contain Articles of War, and specify all the offences against naval law and their punishments. A naval Court Martial consists of from five to nine officers, and must sit on board ship. The numbers of the navy are fixed by the Admiralty, sanctioned by the Exchequer, and met by a vote of the Commons. It is a permanent force. (2 Anson, 349.) The right to impress ships and seafaring men and watermen, bargemen, and lightermen for the service of the Crown in war time was (Rex v. Broadfoot, 1743), and is still, a legal prerogative of the Crown, and was last regulated by Parliament in 1836. If an exempted person is seized, he can get release by habeas corpus and sue for damages for trespass (Flewster v. Royle, 1808). Impressment for the army was first forbidden by a statute in 1327, and again in

1641; but in 1779 a statute sanctioned impressment of all "idle and disorderly persons" during the American War.

Q. Whence do Courts Martial derive their authority? How may they be controlled by Courts of Law?

A. From the Army Acts and Naval Discipline Acts. By writs of prohibition, or certiorari, or habeas corpus (Wolfe Tone's Case, 1798). But the law courts will not inquire into the reasonableness of a charge (even after acquittal) where an officer in his discretion and duty brings before a Court Martial a person subject to its jurisdiction (Sutton v. Johnstone, 1784), even if the accuser acted from malicious motives (Dawkins v. Lord Rokeby). (See Broom, 656.)

Q. What do you know about (1) *the Judge Advocate General,* (2) *the Counsel and Judge Advocate of the Fleet?*

A. (1) He is an officer appointed by Letters Patent from the Crown, to act as principal adviser of the Commander-in-Chief of the army on administration of military law and Courts Martial; and is assisted by two legal and military deputies. None of them officiate at Courts Martial; but they review the proceedings of such courts, to secure the proper administration of military justice and to protect private soldiers. An officiating Judge Advocate must be appointed to attend every general or district court martial; he swears the court, advises both sides on law, looks after the interests of the prisoner, can call and examine witnesses, and records the proceedings. (2) He is the official adviser of the Admiralty on all legal matters as to administration of military law in the navy; he is paid by fees, and only reviews the proceedings of Courts Martial if requested by the Admiralty. A deputy or officiating Judge Advocate must be appointed for every naval Court Martial, where his functions are like those of the same official in army cases.

IX.—The Church.

Q. What precautions did William the Conqueror take to preserve the ancient supremacy of the State when he separated the Ecclesiastical Courts from the Civil?

A. He laid down the rules: (1) That spiritual causes should be tried in spiritual courts by the canon law; (2) that no Pope should be acknowledged, or Papal letters received, or Papal legate land or exercise power, in England without the King's consent; (3) that the decrees of National Synods should not be binding unless confirmed by the King; (4) That the King's tenants in capite and officers should not be excommunicated, or suffer ecclesiastical penalties, without his consent; and (5) the estates of most clerical dignitaries were converted into temporal baronies held of the King by military service. (Taswell-Langmead, 59; Stubb's Charters, 82.) The ultimate results were that the clergy claimed (*a*) absolute exemption from all lay tribunals; (*b*) the right to carry appeals to Rome; (*c*) that lay courts should enforce the penalties inflicted by spiritual courts; and (*d*) the legislative independence of Convocation. (2 Anson, 402.)

Q. What were (1) *the struggle as to investitures,* (2) *the Constitutions of Clarendon?*

A. (1) The dispute was whether a new bishop should be invested by the King (Henry I.) or the Pope; it was settled by the Compromise of Bec (1107), by which the Pope invested him with ring and crozier in token that he got his spiritual jurisdiction from the Church, but he had to do homage and fealty to the King in exchange for his temporalities as a great landowner. (2) They enacted (1164) that criminal clerks were to appear in the King's court, and if handed over to the spiritual courts for trial were not to be protected by the Church if found guilty; that no clerk should

leave the kingdom, and no appeal lie to Rome, without the King's sanction; and elections of bishops should be with the King's sanction. But Henry II. had to annul them in 1170 after Becket's murder.

Q. What led to the passing of the Statutes of Provisors and of Præmunire, and what did they enact?

A. (*a*) The Statute of Provisors was passed in 1351. It recited that the Church of England was founded by former kings and nobles to inform the people of the realm of the law of God, and to make hospitalities, alms, and other works of charity in the places where the churches were founded for the souls of all Christians, and that possessions of great value were assigned by the founders to the Church to support the said charges, and that the patrons had the rights of presentation, and that the Pope had usurped the presentations to English benefices, and granted them to aliens, or sold them, and claimed first fruits and other profits, and that consequently much treasure of the realm went abroad. It enacted that the elections of bishops and other Church dignitaries should be free as in time past, that the rights of all patrons should be preserved, and that all "provisors" (*i.e.*, all who should obtain benefices from Rome by purchase or otherwise) should suffer imprisonment, or death, or outlawry. (*b*) The Statute of Præmunire was 16 Richard II., c. 5 (1393). The King had presented to a prebendal stall at Wells, but the Pope presented an Italian cardinal. Cross suits were brought by the two claimants in the English and Papal Courts. The English Courts decided in favour of the King's nominee, and the bishops agreed to support the Crown, on which the Pope excommunicated them. The Commons and the Lords agreed to support the King, and the statute was then passed. It enacted that anyone bringing or sending into the realm any Papal summons, sentence, or excommunication against any person for assenting to or enforcing the Statute of Provisors should

be put out of the King's protection and incur forfeiture of lands and goods, and be attached, or summoned by writ of *præmunire facias*, to answer for this contempt before the King in Council.

Q. Give the history of the writ de heretico comburendo.

A. Under Richard II. the clergy forged a statute in 1382 ordering sheriffs to arrest and imprison heretics, on a bishop's certificate, until they reformed. In 1400, Henry IV. with the assent of the temporal peers issued a writ to burn a relapsed heretic, and a statute was passed directing obstinate and relapsed heretics to be burnt. A more severe Act was passed in 1414 under Henry V., and this continued until 1539, when the Statute of the Six Articles* defined heresy and punished it with burning, imprisonment, &c. Under Edward VI. these Acts were repealed, but the courts then held that the writ existed at common law, and issued after conviction of the heretic in the archbishop's court. Under Elizabeth, Unitarians were freely burnt under the supposed common law writ. In 1677 an Act of Charles II. abolished the writ altogether. (Carter, 230.)

Q. What do you understand by the expression in 26 *Henry VIII., c.* 1 (*the Act of Supremacy* 1534), *that the King is the only supreme head of the Church in England?*

A. It means that the Crown is for all constitutional purposes the head of a National Church; that (in the language of Elizabeth's Act of Supremacy 1559) the Crown is sovereign over all persons and causes ecclesiastical and temporal, to the exclusion of every foreign power; that the law of the Church is part of the law of the land; that

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* This Statute said: (1) the natural body of Christ is present in the Eucharist, (2) communion in both kinds is not necessary to salvation, (3) the law of God forbids the clergy to marry, (4) vows of chastity must be observed, (5) private masses ought to be retained in the Church, and (6) auricular confession is both expedient and necessary. The doctrinal charges of the Reformation took place under Edward VI.

the Crown appoints all archbishops and bishops, who administer the law of the Church (in person or by deputy), and from whose decisions there is an appeal to the Crown in Council; that by the Act for Submission of the Clergy (1533) Convocation can only meet on the Crown's writ, cannot enact canons without the Crown's licence, and cannot bind the laity without assent of Parliament, and there can be no appeals to Rome, and that canons existing in 1533 bind until altered by consent of Parliament, except where they conflict with statutes, common law, or the Crown's prerogative; and that the distinctive doctrines and forms of worship and conditions of membership of the National Church have all been embodied in Acts of Parliament, and cannot be altered except by Parliament. (2 Anson, ch. 9.)

Q. What was the main purport of the Act of Supremacy and the Act of Uniformity?

A. (1) The Acts of Supremacy (1534 and 1559) assert, as against the alleged supremacy of the Pope, that the King is for all constitutional purposes the head of a National Church. (2) The Act of Uniformity 1559* confirmed the revised prayer book of Edward VI. established in 1552; imposed punishments on a minister using any other liturgy; and required all persons to attend the parish church on Sundays and Holydays, or suffer ecclesiastical censure and a fine of a shilling for the poor. The Act of Uniformity 1662 repeated the Act of 1559, with persecuting clauses against Dissenters, and compulsory attendance at parish churches, both now repealed.

Q. What were the provisions of the Corporation Act 1661, *and Test Act* 1673*?*

A. The Corporation Act required all corporate magistrates

* In 1571, a statute confirmed the 39 Articles which had been passed by Convocation in 1563.

and office bearers to take Holy Communion according to the rites of the Established Church, to renounce the Solemn League and Covenant, and to swear they believed it unlawful on any pretext to take arms against the King. The political test (the oath of non-resistance to the King) was repealed in 1718, and the religious test in 1828. The Test Act was passed to prevent dangers from popish recusants; it required every one holding office from the Crown (civil or military or in the royal household) to publicly take communion in the Established Church, take the oath of supremacy, and sign the declaration against transubstantiation; repealed 1828.

Q. Give a concise account of the legislation under Charles II. with respect to religion.

A. The Corporation Act 1661, *supra*. The Act of Uniformity 1662, *supra*. The Conventicle Act 1664, which subjected to imprisonment any one above 16 years of age who was present at a religious meeting at which 5 persons were present besides the household. The Five Mile Act 1665, which imposed a fine on any Nonconformist minister coming within five miles of any town, or of any parish in which he had been minister. The Test Act 1673, *supra*. The Parliamentary Test Act 1678, which excluded Roman Catholics from both Houses of Parliament.

Q. What was the effect of the Toleration Act of 1689?

A. It exempted from the statutory penalties (against separate conventicles and absence from church) all who took the oaths of allegiance and supremacy and signed a declaration against transubstantiation; it permitted dissenting ministers, who also signed the 39 Articles (save $3\frac{1}{2}$), to administer sacrament and preach in meetings; and it allowed Quakers to affirm instead of taking the oaths. The Act was a reward to Dissenters for helping the Revolution of 1688; but it did not grant religious freedom—for it did not repeal the Acts requiring conformity with the Church of England; it did

not take away the *civil* disabilities of Nonconformists under the Corporation Act 1661 and Test Act 1673, and it did not apply to Roman Catholics and Unitarians. (Taswell-Langmead, 624.)

Q. Sketch the growth of religious liberty since the Revolution.

A. The Toleration Act 1689 was the first step (*supra*). Soon after, Unitarians were disabled from all offices, and the most severe restrictions were placed on Roman Catholics. The Occasional Conformity Act 1711 and the Schism Act 1713 were passed—to prevent evasion of the Test Act 1673 by taking sacrament sometimes at the Established Church, and to crush Nonconformist schools; both were repealed in 1718. From 1727 to 1828, civil offices were practically thrown open to Protestant Dissenters by the passing of annual Indemnity Acts in favour of those who had failed to qualify under the Corporation Act 1661 and Test Act 1673. In 1753, all marriages (save those of Jews and Quakers) were ordered to be in the Established Church. In 1767, the House of Lords held, in Chamberlain of London v. Evans, that one effect of the Toleration Act 1689 was to prevent a fine being recovered from a Protestant Dissenter on his refusal to serve as sheriff because he had not taken the sacrament in the Established Church within a year—a default which disqualified him under the Corporation Act 1661. The Roman Catholic Relief Acts 1778 and 1791 removed a good many disabilities. The Dissenting Ministers Acts 1779 and 1812 relieved them from complying with the Toleration Act. The Toleration Act was extended to Unitarians in 1780. The *civil* disabilities of Dissenters were removed in 1828 by repeal of the Corporation and Test Acts, provided they took a declaration "on the true faith of a Christian" against disturbing the Established Church, as a qualification for civil, military, and corporate offices. The Roman Catholic Emancipation Act 1829 (completed in 1832,

1844, and 1846) removed the disabilities of Papists, *save* for the offices of Regent, Lord Chancellor of England, and Lord Lieutenant of Ireland. In 1833, Quakers and Moravians were allowed always to affirm instead of being sworn. Jews were made eligible for corporate offices in 1845, and for Parliament in 1858. In 1836, a civil registration of births, marriages, and deaths was established, and Dissenters were allowed to solemnize marriages. In 1871, all lay academical degrees and collegiate offices at Oxford, Cambridge, and Durham, were opened to persons of any religious belief. (Taswell-Langmead, ch. 17, s. 4.)

Q. Show how the English Reformation increased the power of the Crown, and contrast it from this point of view with the course of events in Scotland and Ireland.

A. In England, there was no longer a divided authority; the Crown was supreme, both in Church and State; the Reformed Church, its polity, ritual, and doctrines, were prescribed by Statutes; Convocation could not meet or act without the Crown's licence; laymen became judges in Ecclesiastical Courts; most of the patronage was in the Crown or laity; the Union of Church and State was political as well as religious; and the Church became a powerful auxiliary in maintaining the authority of the Crown. In Scotland, Episcopacy was overthrown, and a Presbyterian Church established in unison with the popular taste; this National Church was in constant antagonism to the Crown; its rulers rejected the supremacy of the Crown, and resisted the jurisdiction of Civil Courts; its constitution was Republican, its power was spiritual and popular, its government was the General Assembly which can legislate and judge independently of the Crown so long as it does not override the law of the land; and yet the Reformation was originally adopted, the confession of faith ratified, and the Presbyterian policy established by Statute law, and a Lord High Commissioner represents the Crown in

the General Assembly. In Ireland, the Reformation was forced, and maintained, by the sword on an unyielding priesthood and a half-conquered people; conformity was exacted by severe penalties; it added a new element of discord between the English colonists and the natives; it embittered the chronic discontents against the Government; and it founded a State Church which was in no sense a National Church, and which was disestablished and disendowed in 1869. (3 May, 68-71.)

Q. What were the Ecclesiastical Courts in the reign of Henry VIII., and how did his legislation alter them?

A. (1) Archdeacon's court. (2) Diocesan or Consistory court of each bishop. (3) Provincial courts. In Canterbury, the Court of Arches acting as the consistory court of the archbishop, the court of appeal from the diocesan courts, and also as a court of first instance; Court of Audience, in which the archbishop exercised co-ordinate personal jurisdiction (probably legatine); Court of Peculiars, to deal with parishes exempt from ordinary jurisdiction; and Prerogative Court which, till 1857, took testamentary and matrimonial business. In York, the Chancery Court corresponded to the Court of Arches, and there was also a Prerogative Court. The Statute of Citations (1530) virtually took away from the provincial courts the power to act as courts of first instance to the prejudice of diocesan courts. The Statute of Appeals (1532) said there should be no appeal from the archbishop's court. The Act for submission of the clergy (1533) forbade appeals to Rome but gave an appeal from the archbishop's court to the King in Chancery, commonly called the Court of Delegates. In Elizabeth's reign the courts were the archdeacon's court, diocesan court, provincial court, court of delegates, and court of high commission. In 1832 the powers of the Court of Delegates were transferred to the Privy Council, and in 1833 were vested in the Judicial Committee of the Privy Council, and in 1876 five archbishops

and bishops were added to that Committee as assessors in ecclesiastical cases.

Q. What was the origin and jurisdiction of the Court of High Commission? What was the ex officio *oath?*

A. The Act of Supremacy 1559 empowered the Crown to exercise its ecclesiastical jurisdiction by commissioners appointed under the Great Seal. Under this Elizabeth established a permanent High Commission Court in 1583: it contained 44 members (of whom 12 were bishops) and three members (one of whom had to be a bishop) formed a quorum; it was directed to inquire generally (by jury, witnesses, and all other means) of all matters affecting religion, *e.g.*, schismatic opinions, absence from church, sedition, slander, adultery and immorality, to examine suspected persons on oath, and to tender the oath of supremacy, and inflict any punishment, except death or torture. The *ex officio* oath was, "You shall true answer make to all such questions as shall be demanded of you, so help you God." After taking this oath, the suspect had to answer 24 stringent interrogatories founded on the canon law, to disclose whether he was a papist or dissenter or guilty of immorality. Under Charles I., the enforcement of the ecclesiastical tyranny of Laud by the High Commission Court, and of the civil tyranny of the King by the Star Chamber, created an English Reign of Terror. The Long Parliament abolished the High Commission Court in 1641, and this was re-enacted in 1662; but James II illegally revived it during his reign as the Ecclesiastical Commission Court of seven members—declared illegal by the Bill of Rights. (Taswell-Langmead, 382, 586.)

Q. Give a short account of the Ecclesiastical Courts to-day.

A. The Archdeacon's Court to try local matters (rarely used); the consistory or diocesan court of each bishop, presided over by the chancellor of the diocese, and trying

appeals from the archdeacon's court and also having original jurisdiction over all spiritual causes arising in the diocese; the provincial court of each archbishop to try appeals from diocesan courts; and the judicial Committee of the Privy Council. By the Church Discipline Act 1840 offences by a clergyman on points of ritual or doctrine must be tried by the bishop personally or by the provincial court. By the Clergy Discipline Act 1892 offences by a clergyman against moralty must be tried in the consistory court. By the Public Worship Regulation Act 1874 a judge was appointed with the sanction of the Crown (who is also judge of both provincial courts) and a new procedure was introduced for trying offences against the ceremonial law of the Church before him. By the Benefices Act 1898, if a bishop refuses to admit a clergyman to a benefice, appeal lies to a High Court Judge and Archbishop, of whom the former tries the case and decides all points of law and fact, and the latter pronounces the judgment.

Q. What are the legislative powers of Convocation?

A. To make, alter or repeal canons. But such legislation does not bind the laity unless confirmed by Act of Parliament. The process is for the Crown to issue letters of business to authorise discussion and a licence to make a canon; the new canon is sent to the Home Secretary, and if approved a licence to promulgate it is issued, after which it is formally assented to in Convocation.

Q. What statutes would need to be repealed, and what enactments passed, in order to effect the disestablishment of the English Church?

A. The Acts of Uniformity, and Supremacy, and the provision in the Act of Union with Scotland, would have to be repealed. The spiritual peers would have to be deprived of their seats in the House of Lords; provision would have to be made for the meeting of Convocation, and its power to legislate for the members of the disestablished Church,

without royal authority; the clergy would become eligible to sit in the House of Commons; the jurisdiction of the present Ecclesiastical Courts would be taken away. The Church and its members would have to be placed on the same level as a Dissenting or Romanist Church; it would become a purely voluntary society. Provision would have to be made for the disposal of glebe land, tithes, endowments, and other Church property. Rights of patronage would have to be settled. The question of compensation to those holding vested Church interests would have to be settled.

Q. Describe the different steps in the appointment of a Bishop.

A. A bishop is constituted by election, confirmation, consecration and installation. He is elected by the chapter of the cathedral church under a licence from the Crown termed a *congé d'élire*. The appointment is really made by the Crown. The Sovereign, on the avoidance of the bishopric, sends the licence to the dean and chapter to elect, and with it a letter missive, containing the name of the person to be elected. No one else can be elected, and after a lapse of 12 days, if the election be so long delayed, the Crown can nominate by letters patent. After election, the person elected records his consent to act before a notary public and the election is confirmed by letters patent. (25 Henry VIII., c. 20.)

X.—The Rule of Law.

Q. What is meant by the Rule of Law?

A. *Ante*, p. 26.

Q. What principle is illustrated by the rights of personal liberty, of freedom of discussion, and of public meeting?

A. The Rule of Law, *i.e.*, the equal subjection of all

classes in England to ordinary law administered by ordinary tribunals as distinct from arbitrary government. (Dicey, 198, 199.)

Q. What are the remedies for illegal confinement?

A. All confinement is unlawful, except under due process from the Courts, or under a warrant under the hand and seal of a legal authority specifying the cause of commitment. The remedies are: (1) self-defence, to resist unlawful arrest; (2) writ of habeas corpus, to set the prisoner free; (3) action for damages, for false imprisonment.

Q. What is the nature of a writ of habeas corpus? How is it obtained?

A. It is obtained from a judge of the King's Bench Division on affidavit that some person is detained unlawfully. It issues "as of right" on reasonable cause shown, but not "as of course." The writ is addressed to the gaoler, and commands him within a specified time (at most 20 days) to produce his prisoner in Court, with the writ and the cause of his detention.

Q. What were the principal questions as to illegal commitments in the reign of Charles I., and how were they finally determined?

A. The King committed two of the "managers" of Buckingham's impeachment to the Tower for alleged insolence of speech; but he soon released them, as the Commons refused to transact any business until he did—this was an infringement of the right of impeachment. The King committed the Earl of Arundel to the Tower for marrying without permission a lady of royal blood; this, being done while Parliament was sitting, was an invasion of the parliamentary privilege from arrest. Refusal to pay a "general loan" led to the imprisonment of Darnel, and the decision of the King's Bench that imprisonment "by special command of the King" was a bar to a writ of habeas corpus; but the Petition of Right speedily took away this power of arbitrary

commitment. Next Charles imprisoned merchants for refusing to pay Impositions, and the judges held he was right because of the decision in Bate's Case, as these duties were not expressly named in the Petition of Right; but this claim was resigned soon after.

Q. How is the liberty of the subject safeguarded by English law?

A. By various Statutes which have been passed, and notably by the Magna Charta (*post*, p. 168); the Petition of Right (*ante*, p. 107); by 16 Charles I., c. 10, which enacted that if any man be imprisoned by order of the King in person, or the Privy Council, or of the Court of Star Chamber (which was thereby abolished), he should have a right forthwith to a writ of habeas corpus; and by the Habeas Corpus Acts (*infra*).

Q. What state of things preceded the Habeas Corpus Act 1679?

A. By the Common Law any freeman imprisoned could demand from the King's Bench a writ of habeas corpus in order that the Court might inquire into the legality of the detention, and discharge, or bail, or remand him. This is declared in Magna Charta and other statutes. But the defects in the Common Law were that (1) the writ could not be had in vacation, (2) the court could adjourn the application for the writ as often as it liked, (3) the judge might fix a distant day for the return, (4) the gaoler might disobey the first writ, in which case a second and third writ had to be issued, and (5) the gaoler could evade the writ by changing the prison. Darnel's Case (1627) decided that arrest on a warrant issued by *special command of the King* barred a release on habeas corpus, but the Petition of Right enacted otherwise in 1628. In 'Jenkes' Case (1676), the writ was refused in vacation, the application was adjourned, and the gaoler changed the prison; and this was the real cause of the Habeas Corpus Act 1679. (2 & 3 Hallam.)

Q. What are the chief provisions of the Habeas Corpus Acts, and the evils they were designed to remedy?

A. The Habeas Corpus Act 1679 only implies to persons arrested for a *criminal* matter; it entitles them (except for treason or felony named in the warrant)—on written application to the Lord Chancellor or a King's Bench or Chancery judge, in vacation or not, and on production of a copy of the warrant, or affidavit that a copy is denied—to a habeas corpus; and on service thereof the gaoler must bring up his prisoner and make a return to the writ and the true cause of the arrest, and within two days the judge can bail the prisoner; the writ must be returned, and the prisoner brought up within 20 days of service at the outside; any officer not making a due return, or not giving a true copy of the warrant of commitment within six hours after demand by the prisoner or his agent, or moving his prisoner to other custody without authority, shall pay £100 to the person grieved; a person arrested again for an offence on which he has been freed on habeas corpus shall receive £500 from his captors; a person committed for treason and felony can insist on being indicted in the next term or sessions, or on bail, unless the witnesses for the King cannot then be produced; and if he is acquitted or not tried in the second session or term, he shall be released; a judge refusing a habeas corpus is to forfeit £500; habeas corpus shall run into the Channel Islands; no inhabitant of England can be sent prisoner to Scotland, Ireland, or any place beyond the seas, under penalty (not pardonable) of £500 and treble costs. The *defects of the Act* were: (1) it imposed no limit on the amount of bail; (2) it did not guard against false returns to the writs; and (3) it only applied to persons committed on criminal or supposed criminal charges, and left other cases of unjust detention to the Common Law remedy. In 1689 the Bill of Rights enacted that excessive bail must not be required. By the

Habeas Corpus Act 1816, the 1679 Act was extended to imprisonment of all kinds, and the Courts were directed to inquire into the truth or falsity of the return to the writ. The case of the Canadian Prisoners (1839) was one in which rebels sentenced to transportation to Van Diemen's land were shipped from Canada to Liverpool for transhipment, and it was held that they were lawfully in custody, as there was then no direct communication between Canada and the place of punishment. After Anderson's Case, in which the Queen's Bench issued a habeas corpus into Upper Canada, it was enacted by the Habeas Corpus Act 1862 that no English Court can issue a habeas corpus into any colony if a Court of that colony can issue such a writ. (Taswell-Langmead, ch. 15.)

Q. What was the decision in Somerset's Case, and how has it been explained in subsequent cases?

A. The exact point decided (1771) was that a person forcibly detained in England as a slave is entitled to be discharged on habeas corpus. The arguments establish that: (1) English Law never recognized any kind of domestic slavery except villenage; (2) villenage has been obsolete since Pigg v. Caley (1617); (3) the law always presumed *in favorem libertatis;* (4) the owner of a slave has no authority or control over him in England and no authority to remove him out of England. (See 20 St. Tr., 1.) In 1823 it was held, *Re* The Slave Grace, that if a slave is brought to England and voluntarily returns to the country of slavery, the status of slavery revives; though Knight v. Wedderburn (1778) had decided that the slave could not be compelled to serve whilst here. Forbes v. Cochrane (1815) decides that a slave who escapes to a British man-of-war becomes free, unless his master can persuade him to return. Le Louis' Case (1817) decides that slave trading is not piracy or a crime by the law of nations, and that consequently there is no right of search except

in time of war; but this is now regulated by the Slave Trade Act 1873, and the various slave trade treaties. Wallis v. Day (1837) decides that a contract of service for life is valid. Rex v. Broadfoot (1743) decides that pressing seafaring persons for the navy is legal under a proper warrant.

Q. What is the nature of existing restraints on freedom of discussion?

A. The laws of libel, slander, sedition, blasphemy, and treason. No man can be interfered with, except for statements that form a breach of law. (Dicey, 236.)

Q. Trace the growth of the freedom of the Press.

A. The (so-called) freedom of the Press in England means: (1) that there is no censorship, but newspapers are subject to the same ordinary law as individuals, and (2) that Press offences are tried by the ordinary tribunals of the country, *i.e.*, by a judge and jury. Soon after printing was invented in the 15th century, the Press was placed under a rigorous censorship. Under Henry VIII. no writings could be published without the *imprimatur* of a Licenser, and patents and monopolies were granted. Mary and Elizabeth enforced a rigorous censorship. Under James I. and Charles I., political and religious discussion were sternly repressed by the Star Chamber. The first newspaper was published in 1623. The Long Parliament continued the censorship. From 1662 to 1679 there was a Licensing Act in force. After this Act had been allowed to expire, the 12 judges decided in Carr's Case (1680) that it was a crime at Common Law to publish anything (good or bad) concerning the Government without a royal licence; this decision stopped at once unofficial newspapers. From 1685 to 1694 another Licensing Act was in force. In 1695 the censorship ceased, and the Press became theoretically free. But Parliament hampered it (*ante*, page 68); and so did the Government, by Stamp Acts and by straining the

criminal law of libel. Advertisement duty was not abolished till 1853; stamp duty till 1855; and paper duty till 1861. Under George III., the judges held—in Almon's Case and other cases arising out of the publication of the *North Briton* and the letter of Junius to the King—that publication of a libel by a servant was conclusive proof of his master's guilt, and that truth or falsehood of the libel was immaterial in a criminal prosecution, and that juries could only decide the question of publication. In 1792 Fox's Act enabled the jury to return a general verdict of guilty or not guilty. From that year to the Reform Act 1832 Press prosecutions abounded; but since the Libel Act 1843 the Press has been really free. (Taswell-Langmead, ch. 17.)

Q. Give a short history of the controversy settled by Fox's Libel Act 1792, *and mention the chief points in subsequent Libel Acts affecting the liberty of the Press.*

A. The Libel Act 1792 overruled Lord Mansfield's decision, that it was for the judge alone to decide on the criminality of the libel. The Libel Act 1843 lays down that in all prosecutions for defamatory libel, the defendant may plead truth and publication for the public benefit (setting out the facts on which he relies to prove the second point); and the defendant may give evidence to show that his servant published the libel without his knowledge—thus overruling Almon's Case; and that in civil actions for newspaper libel, the defendant may plead publication of an apology to mitigate damages. The Newspaper Libel Act 1881 allows justices to take any evidence that could be given for the defence at the trial, and to dismiss the charge if they think a jury would not convict; and in trivial cases, by consent to convict summarily and fine up to £50. The Libel Act 1888 privileges a newspaper report of judicial proceedings; also (on stringent conditions) a newspaper report of a public meeting, if the matter is of public concern, and the publication of it is for the public benefit;

permits evidence of damages recovered from other sources to mitigate damages; requires a judge's order to sanction criminal proceedings for a newspaper libel; and makes the defendant a competent witness in all criminal cases of libel.

Q. What are the leading provisions of the principal Libel Acts?

A. Fox's Act (Libel Act 1792) says, juries can give a general verdict in criminal proceedings for libel. By 1 George IV., c. 8, after conviction for blasphemous or seditious libel, the Court may order search for, and seizure of, any copies. By the Parliamentary Papers Act 1840 all civil and criminal proceedings for libel are to be stayed on production of a certificate (verified by affidavit) that the publication is by order of either House of Parliament. By the Libel Act 1843—(1) an apology may be proved in mitigation of damages in any action of defamation; (2) in an action for newspaper libel, defendant may pay money into Court and plead want of actual malice and gross neglect, and publication of an apology; (3) publication of a defamatory libel is punishable with a fine and a year's imprisonment; publication with knowledge of its falsity, with a fine and two years; and publication with intent to extort, with three years; (4) in criminal proceedings, it is a good defence to prove truth and publication for the public welfare, and costs are to follow the event. By the Newspaper Libel Act 1881 justices have summary jurisdiction by consent, and may fine up to £50. By the Libel Act 1888 newspaper reports of judicial proceedings, and of public meetings, are privileged to a certain extent; and actions for the same libel can be consolidated, and damages and costs apportioned; and a defendant in an action for newspaper libel may show that plaintiff has already got compensation elsewhere; and criminal proceedings for newspaper libel cannot be commenced without the fiat of a Judge at Chambers granted after hearing both sides.

Q. When is privilege allowed to be pleaded in actions for libel on public and constitutional grounds?

A. Under the Parliamentary Papers Act 1840, the Libel Act 1843, and the Libel Act 1888 (*supra*).

Q. Discuss the phrase "the right of public meeting." By what legal limitations is the assembly of people together for purposes of discussion restricted or controlled?

A. English Law does not recognise any special right of public meeting for any purpose; such right is simply the outcome of personal liberty. Any meeting, for a lawful object, in a place which the individuals have a right to occupy, and acting in a peaceable way which inspires no sensible person with fear, is a lawful assembly. The limitations are the laws against trespass, nuisance, theft. The Government has no power to prohibit a lawful assembly. (Dicey, 266-279, 445.) A lawful assembly does not become unlawful if it is known beforehand that other persons will use force to prevent it (Beatty v. Gillbanks, 1882); but (1) anything unlawful in the conduct of the persons calling or addressing a meeting which would naturally provoke opponents to break the peace may make the meeting an unlawful assembly (Wise v. Dunning, 1902), and (2) a lawful meeting becomes unlawful if it is impossible to preserve the peace without dispersing it, and those present refuse to disperse (O'Kelly v. Harvey, 15 Cox, 435.)

Q. What was the legislation of the 19th century with regard to trade combinations?

A. At Common Law, no case can be found before 1825 in which a person was convicted of conspiracy in restraint of trade, for combining with others to raise the rate of wages. Many statutes made this an offence, especially the "Combination Acts" of 1799 and 1800. In 1824 an Act was passed on the basis that labour was to be bought and sold, like other commodities; it repealed all prior statutes as to combinations of workmen; it declared a combination of

workmen to raise wages, restrict hours of labour, and limit production, lawful; also a combination of masters, to lower wages, increase hours, and stimulate production; but coercion of others for these objects was made a crime. This Act was thought too wide, and in 1825 a new Act was passed, which imposes penalties for molesting workmen (in great detail), and then, in guarded words, legalised Trades Unions by way of exception. In 1859 an Act declared it was not "molestation" to combine to persuade others peaceably to assist in fixing wages or hours of work. The excesses of Sheffield Trade Unionists were followed by a Parliamentary Commission in 1867. In 1871 the Trade Union Act declares that such a union is not unlawful merely because it is in restraint of trade. The Conspiracy and Protection of Property Act 1875 repeals the above Acts of 1825 and 1859, and lays down carefully-defined offences, which are punishable with 3 months' hard labour. (3 Stephen's History, ch. 30.)

Q. What are the treasons defined in the statute of Edward III. (now called the Treason Act 1351)*? What is the Treason Felony Act?*

A. (1) Where a man doth compass or imagine the death of the King, or the Queen, or their eldest son; (2) violation of the King's wife, or his eldest daughter unmarried, or the wife of his eldest son; (3) levying war against the King in his realm; (4) being adherent to the King's alien enemies (R. v. Lynch, 1903); (5) counterfeiting the King's seal or his money; (6) knowingly bringing false money into the realm; (7) slaying the chancellor, treasurer, or judges, whilst engaged in their duty. Those numbered (5) and (6) are no longer treason. The Treason Felony Act was passed in 1848; it enacts that (1) compassing or imagining the deposition of the King, (2) conspiring to levy war against him directly, and (3) instigating foreigners to invade the realm, shall be felony punishable with penal servitude for

life, as well as treason punishable under the statute of Edward. (2 Stephen's History, ch. 23.)

Q. How has the offence of treason (a) *by compassing the King's death*, (b) *by levying war, been construed?*

A. (*a*) It includes compassing bodily harm or restraint of the King; conspiracy to levy war, with intent to depose the King or to compel legislation by force and terror; conspiracy to depose; and instigating foreigners to invade the realm. This is the construction of Coke, Hale, Foster, and judicial decisions. (2 Stephen's History, ch. 23.) In Peacham's Case (1615), an *unpublished* sermon which libelled the Government was held to be an overt act of compassing the King's death. Horne Tooke and Hardy's Case (1794) lays down that evidence of intent to depose is evidence of compassing death. (*b*) In the Case of Damaree and Purchase (1710), burning *some* dissenting chapels was held evidence of an intent to burn all, and therefore treason by levying war, as the object was public. In the Gordon Riots Case (1780), Mansfield, L.C.J., held that if a mob assemble with intent by force to compel the repeal of a law, it is treason by levying war.

Q. What is necessary to constitute the offences of riot, unlawful assembly, seditious libel, and blasphemous libel? What is the Riot Act?

A. *Riot* is where three persons at least proceed to execute an unlawful purpose to the terror of the people. *Unlawful assembly* is where three persons at least meet to carry out a common purpose in such a manner as to be likely to endanger the public peace (Reg. v. Vincent, 3 St. Tr., 1038; Beatty v. Gillbanks, 1882). *A seditious libel* is a published document which is calculated to induce ignorant persons to endeavour to change the Government and the laws otherwise than by constitutional agitation. *A blasphemous libel* is a published document which applies licentious abuse to sacred things, as distinct from a temperate and

honest discussion of the truths of Christianity (Reg. v. Ramsey, 48 L. T., 74). *The Riot Act* (1 George I.) says that 12 or more persons unlawfully assembled shall be liable to penal servitude for life if they continue unlawfully assembled for one hour after the proclamation under the Act has been read commanding them to disperse.

XI.—Legal History.

Q. Trace the history of the "Curia Regis" down to the Great Charter.

A. The term is used variously to denote the National Council for taxation and legislation, the Supreme Court of Justice, and the Continual (or Privy) Council. Under the Conqueror, the *Curia Regis* was a standing Council which assisted the King to collect and manage his revenue (origin of Court of Exchequer), to administer* justice, and to dispatch all public business. It comprised the justiciar, the Chancellor, and high officers of State, and followed the King's person. Its general business as a court of Justice was to hear appeals from the shire and hundred courts, and to try cases in which the King's interest was concerned, or in which two tenants *in capite* were parties, or (by special favour) other subjects were parties. Under Henry I., a justiciar who held office for 32 years organized its administration for judicial and financial business; Courts were regularly held at Gloucester, Winchester and Westminster during the great festivals; justices in *eyre* were appointed to perambulate the kingdom for judicial and fiscal purposes. Under Henry II., the *Curia Regis* and Exchequer were again reorganized; justices in *eyre* reappointed with regular

* It seems that any court was called *Curia Regis* if it was presided over by the King's officer and did the King's business.

circuits, and juries introduced; the judges in the *Curia* were reduced from 18 to 5 (origin of the King's Bench), and the King reserved for himself in Council all cases in which the *Curia* failed to do justice. Thence the *Curia* regularly sat in *banco*; but continued to follow the King's person, until in 1216 Magna Charta provided that Common Pleas (civil suits between subjects) should be always tried at one fixed place, which, after Henry III. confirmed Magna Charta was Westminster. Soon after 1178, the Court of King's Bench sprang from Henry II.'s limited *Curia*, and acquired exclusively the term *Curia Regis*. (2 Hallam's Middle Ages, ch. 8; 2 Anson, ch. 10; Taswell-Langmead, various.)

Q. Mention some of the means by which the Curia Regis extended its jurisdiction at the expense of the local courts.

A. Any suitor who chose to pay a fine could remove an action from a local court. The King could always order a removal, and so could the justices in *eyre*. The Court had cognizance of all fiscal business. Any question about land, and some cases of debt, could be called into the *Curia Regis* by a writ of *praecipe quod reddat*. A writ of *justicies* could order the sheriff to try any case whatever, as a royal judge. The writ of *right* could remove all questions as to ownership of real property into the royal court. All matters alleged by the complainant to be *contra pacem domini regis* belonged solely to the royal court. A *tolt* or order from the sheriff could remove any case from the manor court into the county court; and the writ of *pone* could call up any case from the sheriff's court to the royal court; while the writs of error or of *recordari facias* could call up any case by way of appeal. (Carter, ch. 5.) The jurisdiction of the Common Law county court of the sheriff was abolished in criminal cases by Magna Charta, and restricted in civil actions to cases where the debt or damage claimed did not exceed

forty shillings by the judicial construction put on the Statute of Gloucester (1278).

Q. Describe the growth of the three Courts of Common Law.

A. Under the Saxons, the Witan was the supreme court for lay and spiritual causes. William I. sent spiritual causes to spiritual courts, and separated the judicial functions of the National Council from its deliberative functions, and delegated the former to his *aula regis* (or *curia regis*). Henry II. remodelled the *curia regis*, and ordered it to consist of five judges, to sit regularly in *banco* but to follow the King. Magna Charta established a Court of Common Pleas at Westminster to try civil actions between subject and subject. The *curia regis* declined in authority under Henry III., and was remodelled by Edward I.—under whom it was split up into the courts of (1) the Lord High Steward, to try delinquent peers; (2) Chancery, which issued all original writs; (3) Exchequer, which managed the revenue; (4) Common Pleas; and (5) King's Bench, which had the balance of jurisdiction, including pleas of the Crown. Common Pleas had exclusive jurisdiction over real actions. Exchequer usurped jurisdiction in all personal actions by the writ of *quo minus*, in which plaintiff said he was the King's debtor, and was the less able to pay because defendant had done him the injury complained of. King's Bench usurped jurisdiction over civil actions (except real actions and revenue cases) by a Bill of Peace with an *ac etiam* clause (aided, if necessary, by a writ of *latitat*) under which, on a fictitious allegation that he had broken the peace in Middlesex, defendant was committed to the custody of its marshal, and so became amenable for debt or damages to its jurisdiction. In 1832 a statute abolished the variety of process, but confirmed the usurped jurisdictions, which lasted until the Judicature Acts 1873 and 1875. (3 Stephen's Commentaries, Book V., ch. 5.)

Q. What stage had been reached in the development of our system of courts at the death of Edward I.?

A. The Courts of King's Bench, Exchequer, and Common Pleas had all been established; and justices in *eyre* had been appointed.

Q. Give a short history of the Court of Admiralty.

A. It first appears under Edward III., about 1340. Up to then admiralty matters were decided by the Common Law courts, the Chancellor, or the Council. Two Acts of Richard II. limited and defined the jurisdiction of the Admiral's Court, and gave it authority over ships below bridges in great rivers, while forbidding it to deal with things arising in the bodies of counties. By various statutes its criminal jurisdiction is now vested in the Central Criminal Court and Assize Courts. The civil jurisdiction extended to all wrongs (torts) at sea; but as to contracts was limited to those made upon or beyond sea and charter parties, and (as it was not a court of record until 1861) the Common Law courts issued a writ of prohibition unless it was clear the claim arose on or beyond sea. The Admiralty Court Acts 1840 and 1861 largely extended the jurisdiction; see also Merchant Shipping Act 1894. By the Judicature Acts it became a part of the High Court of Justice. Its procedure is either *in rem* or *in personam* (Carter, 167.)

Q. What is the history of the legal jurisdiction of the Council after the establishment of the Common Law courts?

A. There was still a residuum of judicial power in the Crown. Suitors dissatisfied with the decisions of the courts petitioned the Crown in Parliament, alleging error—hence came the Appellate Jurisdiction of the House of Lords. Persons who complained that the courts could not give them the redress required, petitioned the Crown in person or the Crown in Council; these petitions were (*a*) referred to the Chancellor—hence arose Equity, always acting *in*

personam and not awarding damages, set in motion by Bill followed by subpœna enforced by attachment, or (*b*) dealt with by the Council—origin of the Court of Star Chamber, Court of Requests, and Judicial Committee of the Privy Council. (2 Anson, 435, 436.)

Q. What is the origin of the Appellate Jurisdiction of the House of Lords?

A. After the Courts of Exchequer (for revenue cases), of King's Bench (where Crown interests were affected), and of Common Pleas (for civil suits between subjects) had split off from the *Curia Regis*, the King in Council in Parliament remained a final Court of Appeal (Edward III.). And when the Council was finally severed from Parliament under Richard II. this jurisdiction vested in the House of Lords—for the Council had ceased to be Parliament, and the Commons were not Council; and this was assented to by the Commons under Henry IV. Thus appellate jurisdiction from the Common Law courts became vested in the House of Lords. Skinner v. East India Co. (1668) decided that the Lords had no original jurisdiction in civil actions. Shirley v. Fagg (1675) decided that there is a right of appeal from Equity courts to the Lords; the first instance of such an appeal was Bourchier's Case (1621). (Cf. 1 Anson, 342.)

Q. Compare the jurisdiction and procedure of (a) *the House of Lords and* (b) *the Privy Council as Courts of Final Appeal.*

A. (*a*) The jurisdiction now rests on the Appellate Jurisdiction Act, 1876. It is to try appeals from the English, Scotch, and Irish Courts of Appeal. The procedure is by petition within a year, asking for such relief as the King in Parliament sees meet. There must be three peers to try any case—selected from the Lord Chancellor, the four Lords of Appeal in ordinary, and those peers who have held high judicial office. Lay peers do not take part. Judgment is given (after hearing counsel) as part of the House's business.

Divergent judgments can be delivered, but the majority of votes carries the day. The House regards its previous decisions as binding, and can send for the assistance of the judges. (*b*) In 1832 appeals from the Channel Islands, the Plantations, and Isle of Man, and lunacy matters, and Ecclesiastical and Admiralty Appeals, were heard by an open committee of the Privy Council. In 1833 the Judicial Committee of the Privy Council was formed by statute (3 & 4 Will. IV., c. 41); and to it Ecclesiastical, Colonial, and Indian Appeals now go. Four members must be present to try a case, and each must be summoned. The committee includes the Lord President, Privy Councillors who have held high judicial offices, the four Lords of Appeal in ordinary (Judicial Committee Act 1881), two persons appointed by sign manual, and two retired East Indian judges. Under the Appellate Jurisdiction Act 1876, and subject to the due performance of his duties with regard to House of Lord's Appeals, it is the duty of a Lord of Appeal, if a Privy Councillor, to sit and act also as a member of the Judicial Committee. The committee advises the King, and the advice is sanctioned by Order in Council. The committee decides by majority of votes, but no disclosure can be made of the particular votes, and the committee must give unanimous advice, and does not hold itself bound by previous decisions. (2 Anson, ch. 10.) In criminal cases there is no appeal on the facts, but only on a point of law if substantial injustice can be shown (*Ex parte* Deeming (1892)).

Q. Give some account of the origin and history of the Court of Chancery.

A. Its origin was the idea that the King, as the fountain of justice, could redress grievances when the Common Law failed to do so. From Henry II. all actions at law were begun by original writ; sometimes the suitor chose the wrong writ and so lost his right to sue; sometimes no

appropriate writ existed. The Provisions of Oxford (1258) forbade the Chancellor to issue any writ, which was not *de cursu*, without leave of the Council, and this seems to have permanently checked any development of the Common Law, though it was only in force six years. The statute *In consimili casu* (1285) directed the Clerks in Chancery (who issued the writs) to frame a suitable writ if none existed; but the judges had to decide on the validity of the new writs and were jealous of changes, and the chief practical result was to introduce actions of trespass on the case. If no relief could be had at law, the suitor petitioned the King in Council. In 1280 matters of grace were directed to be reported on by the Chancellor. In 1348 Edward III. established the Court of Chancery by an Ordinance referring all matters of grace to the decision of the Chancellor, and Chancery then ceased to follow the King. The disregard paid by the Common Law judges to Uses largely increased the jurisdiction of Chancery, and under Richard II. John Waltham issued a writ of subpœna returnable into Chancery by which the legal owner of land was compelled to appear and to account for the profits to the beneficial owner. From 1394 Chancery rapidly increased in power. Under Henry VI. the Chancellor began to issue injunctions. Under Henry VIII. the Chancellor began regularly to sit alone. The process was by subpœna commanding appearance, disobedience being followed by a commission of rebellion to forcibly arrest the party as a rebel and by a commission of sequestration to seize the party's land; attachment and sequestration continued the methods of enforcing a Chancery decree until the Judicature Acts, and are still in use. If any one complained to the Chancellor that he was wrongfully imprisoned, the writ of *corpus cum causa* issued. The Court flourished greatly under the Stuarts. Under James I., Ellesmere laid down that the Chancellor is bound by precedents, and secured the right by injunction to prevent

a person reaping the benefit of a Common Law judgment obtained by fraud. Bacon laid down that it is the business of Equity to supplement the Law and not to subvert it. It was settled that Equity cannot override a Statute, and gives no help if there is an adequate remedy at Law, and would not assist a person who had given no value, and would not help a person with equitable rights against another with both legal and equitable rights. The business comprised trusts, injunctions, specific performance, mortgages, fraud, relief against penalties and forfeitures, and infants. But the great doctrines of Equity were all finally settled by Hardwicke, Thurlow, and Eldon. The only new doctrine of Equity since 1827 seems to be Jessel's decision that a trust must be created by imperative words.

Q. Give some account of the early history of Chancery procedure.

A. The proceedings were all in English (this was not the case at Law until 1731). No writ was required to found the proceedings. The complainant filed a petition—afterwards a *Bill*—and if the facts therein set out seemed to constitute a case for interference, the *writ of subpœna* was issued commanding the defendant to *appear* on a day named and answer. Then a written *answer* on oath was put in.

Q. What advantages of procedure were formerly enjoyed by Chancery as compared with the Common Law courts?

A. In Chancery the defendant was compelled to put in an answer on oath; whilst at Common Law, the defendant was not even allowed to be a witness for himself, much less was he compelled to submit to examination by the plaintiff. The Common Law courts could only give damages; but Chancery could compel the performance of an undertaking, or forbid a contemplated wrong, on pain of attachment. (2 Anson, 436.)

Q. Give a short account of the controversy between the Courts of Common Law and Equity in the reign of James I.

A. The dispute was whether Equity had power to issue an injunction to prevent a person reaping the benefit of a judgment obtained at Common Law by fraud. James I. decided (1616) in favour of Lord Chancellor Ellesmere and against Chief Justice Coke.

Q. Describe the origin and jurisdiction of the Court of Star Chamber. When was it abolished?

A. Under Edward III., the King's continual council used to sit in the Star Chamber. After the Court of Chancery had taken cognizance of the bulk of the civil business of the Council, the latter usually sat in the Star Chamber to exercise jurisdiction over cases not sent to Chancery. It declined in importance until 1487, when by 3 Henry VII., c. 1, the jurisdiction of the Star Chamber (*i.e.*, the Council sitting for judicial business) was revived; the effect of the Act seems to have been to make the chief justices standing members of the court, to cause it to observe the law terms, and to give a power to examine by interrogatories on oath. Under Edward VI. it was still a committee of the Council. Under Elizabeth it became a judicial body, distinct from the Council. Under the Stuarts it became merely an instrument for enforcing the claims of the royal prerogative. Its procedure was: (1) In suits between private persons, the plaintiff filed a bill to which defendant had to put in a sworn answer, and interrogatories and depositions followed; and (2) In other cases, the Attorney General filed a written information, and the accused was brought up by subpœna or arrest, and examined on oath. Its jurisdiction was founded on the inefficiency of ordinary tribunals to do complete justice. Its civil jurisdiction comprised disputes as to customs of manors, and between alien merchants and Englishmen, questions of prize and unlawful detention of ships, maritime matters generally, some testamentary causes, and suits between corporations—these were gradually absorbed by the Admiralty, Common Law, and Chancery

Courts. Its criminal jurisdiction extended to forgery, perjury, riot, maintenance, fraud, libel, conspiracy, all breaches of proclamations, and all misdemeanours; and it could pronounce any sentence save death. It was abolished by the Long Parliament in 1641. (Taswell-Langmead, 193-195; Carter, ch. 14.)

Q. How were the Common Law courts affected by the abolition of the Court of Star Chamber?

A. The statute, abolishing the Court, recites that all matters examinable or determinable in the Star Chamber can be examined and determined at Common Law; and enacts that neither the King, nor his Council, have any jurisdiction outside the ordinary Courts of Justice over any man's estate, and that persons committed by the King or Council shall have a writ of habeas corpus. One effect was to permanently enlarge the criminal law, for the King's Bench ever after punished perjury, forgery, riot, libel, conspiracy, and all attempts to commit crime—which previously were not crimes at Common Law.

Q. Give a short account of (a) *the Court of Requests;* (b) *the Court of the President and Council of the North.*

A. (*a*) It probably originated in 1390 by an order of Richard II. that the Privy Council should form a committee to expedite the petitions of humble people. Henry VII. made this a standing committee of named Councillors. Wolsey fixed the Court at Whitehall. Suitors alleged they were too poor to sue at Common Law (*e.g.*, copyholders resisting encroachments by their lord) or were royal servants attending the King. It only transacted civil business. Under Henry VIII. the judges ceased to be Privy Councillors, and therefore in Stepney's Case (1598) it was adjudged in the Common Pleas to be no court that had any power of judicature. But it continued to flourish until in 1642 the civil war broke out, the privy seal was withdrawn, and it died a natural death from loss of legal machinery. (*b*) This

was established, together with the Court of the President and Council in Wales, by letters patent in the reign of Henry VIII. These Courts, together with the Court of the President and Council in the West (created by 32 Henry VIII., c. 50), were subsidized by Parliament and had unlimited civil and criminal jurisdiction. They all fell with the Star Chamber. (Carter, 147, 148.)

Q. Under what commissions do the judges sit at Assizes? What is the history of Nisi Prius *?*

A. Commissions of Assize (to try the real actions now abolished) and of *nisi prius* (to try civil actions). Commissions of the Peace (to punish those who break the King's peace), of oyer and terminer (to determine indictments for treason, felony and misdemeanour, presented by the grand jury), and of gaol delivery (to try prisoners). Civil actions were originally set down for trial at Westminster by a local jury, "unless before" the case came on there the judges of assize tried it in the county from which the dispute originated; by the Common Law Procedure Act 1852, the procedure in civil actions ceased to be ostensibly connected with the proviso of *nisi prius*; and the expression now simply denotes civil business as distinct from pleas of the Crown. (Stephen's Commentaries, Vols. III., IV.)

Q. Mention the present divisions of the Supreme Court of Judicature, and the different Courts to which it succeeded.

A. It comprises the Court of Appeal,* to decide appeals only; and the High Court of Justice, which is sub-divided into the King's Bench, the Chancery, and the Probate, Divorce and Admiralty, Divisions. The old Courts were Chancery, Queen's Bench, Common Pleas, Exchequer, Probate, Divorce, Admiralty, and Bankruptcy.

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* The judges are the Master of the Rolls, five Lords Justices, the Lord Chancellor, the Lord Chief Justice, and the President of the Probate, Divorce and Admiralty Division.

Q. Explain the process which has been termed "the fusion of Law and Equity."

A. By the Judicature Act 1873, the former superior courts are moulded into one (*supra*); the new tribunal is to recognize all equitable estates, rights and titles, just as Chancery formerly did; and where there was formerly a conflict between the rules of Law and of Equity, the latter shall prevail. (Secs. 16, 24, 25, 34.)

Q. How did the Stuarts interfere with the independence of judges? On what tenure do judges hold office?

A. Under the Stuarts, the judges were appointed and removed at the pleasure of the King—a formidable weapon for carrying out the theory of the divine right of kings. Now, by the Act of Settlement, judges hold office during good behaviour, but may be removed by the Crown on an address from both Houses of Parliament. Under James I.—(*a*) in the Case of Impositions (1606) the precarious tenure of judicial office induced the decision that the King could levy customs without sanction of Parliament; (*b*) when consulted by the Council, the judges bravely held, in the Case of Proclamations (1610), that the King could not create new offences by Proclamation, and had no prerogative except such as the law allowed; (*c*) the judges of assize were employed to recommend payment of Benevolences; (*d*) the King claimed the right to interfere with the judges whenever the rights of the Crown were touched, and in the Case of Commendams (1616) forbade the Court to try the case until they had his instructions, but the judges disregarded this and Coke consequently lost his Chief Justiceship. From this time the judges were the creatures of the King. Under Charles I.—in Darnel's Case (1627), the judges held that a person imprisoned by order of the King had no right to a habeas corpus; tunnage and poundage, monopolies, and many other illegalities were upheld by the judges; in 1637, in the case of Ship Money (Hampden's Case), the King first

procured privately the opinions of the judges, and then a judgment in his favour. James II. procured from a packed bench (after dismissing four judges) the decision in Godden v. Hales (1686) that the King could dispense with any law; his unsuccessful attempt, in 1688, to convict the Seven Bishops of seditious libel, for petitioning the Crown against the Declaration of Indulgence, led to the Revolution.

Q. (1) *How may the responsibility of Judges of the Superior and Inferior Courts be enforced?* (2) *Can actions be maintained against them in respect of their judicial Acts?*

A. (1) A High Court Judge holds office during good behaviour, but can be removed on an address to the Crown by both Houses of Parliament. Judges of Inferior Courts can be removed for lack of good behaviour, and are controlled by writ of mandamus or prohibition or *procedendo* or *certiorari*. (2) No (Kemp v. Neville, 1861)—not even if express malice can be proved (Scott v. Stansfield, 1868; Anderson v. Gorrie, 1895); and not even if they had no jurisdiction, unless they knew (or ought to have known) the defect (Calder v. Halket, 1839).

Q. Trace the beginnings of trial by jury in civil and criminal cases?

A. The jury is probably a Norman introduction. Under the Conqueror it was used for non-judicial matters (*e.g.*, to ascertain the laws of Edward, Domesday survey, assessment of taxation), and occasionally to decide legal cases. Under Henry II. the Grand Assize, or trial by the recognition (*i.e.*, knowledge) of a jury, was introduced to supersede trial by battle to decide the ownership of land, and trial by compurgation (wager of law), and was gradually extended to all kinds of fiscal and legal business; and under Edward I. it was regularly used to assess taxation. By the Constitutions of Clarendon (1164)—(1) If none would accuse a powerful layman amenable to the bishop for crime, the sheriff was to swear 12 lawful neighbours to tell the truth according to

their conscience; and (2) the Chief Justice was to decide all disputes between clergy and laity as to tenure of land by the recognition of 12 lawful men. The recognitors were sworn to found their verdict on their own knowledge, gained by eye-witness, or the words of their fathers, or such words as they had as much confidence in as their own; the recognitors were the only witnesses; if all were ignorant, a fresh jury was sworn; if some were ignorant, or they could not agree, they were *afforced* by adding others until a verdict could be got from 12. *In criminal cases*, a primitive Grand Jury of accusation existed under Ethelred II. (978), and continued in use until Henry II. It is first referred to in the Constitutions of Clarendon (*supra*), and was remodelled in 1166 by the Assize of Clarendon ordaining that in each county 12 lawful men of each hundred and 4 of each township should be sworn to present all reputed criminals of their district at each County Court. By the Assize of Northampton (1176) all men accused before the King's Justices of murder, theft, forgery, robbery, arson, or the like by the oaths of 12 knights in the hundred or of 12 lawful men and 4 men from each township had to go to the ordeal of water, and even if acquitted by ordeal, had, if accused of murder or base felony, to leave the realm within 40 days; it was further regulated by Richard I. in 1194, and is the direct progenitor of our Grand Jury. In 1215 ordeal was abolished, and the Grand Jury being found inadequate to secure justice, the practice gradually sprang up of allowing a second or Petit Jury to affirm or traverse the verdict of the Grand Jury; this was general under Henry III., but the prisoner was not bound to plead before the Petit Jury until 3 Edward I. made him liable to *peine forte et dure* (abolished by 12 George III., c. 20). Thus, the jury originally consisted of witnesses who decided on oath that of which they knew; whereas in its present form the jury are simply sworn to give their decision upon the

oral or written testimony of others put before them. In 23 Edward III. occurred the first case in which the jury decided on evidence produced in addition to their own knowledge. Under Henry IV. evidence (outside the knowledge of the jury) had to be given at the bar of the court—hence have sprung (1) all the rules of evidence, (2) the modern duty of advocates. Not until George I. were the jury debarred from acting on their own knowledge. (Taswell-Langmead, ch. 5.)

Q. When was the independence of juries established?

A. By Bushell's Case in 1670. Bushell was foreman of the jury that acquitted Penn for preaching contrary to the Conventicle Act; the Recorder of London, at the instance of the Crown, fined each juror; Bushell was imprisoned for non-payment, and got a habeas corpus; the return was that he was imprisoned for finding a verdict contrary to manifest evidence and the direction of the Court; Vaughan, C.J., held the return insufficient and discharged Bushell.* The judge laid down that the jury in a criminal case can return a *general verdict* of guilt or innocence. At the trial of the Seven Bishops (1688) the jury asserted their right to return a general verdict in criminal cases of libel. But in 1779 Mansfield, C.J., held in Almon's Case (5 Burr, 26, 86) that the jury could only decide the question of publication, and the question of libel or no libel was for the judge; hence Fox's Libel Act 1792 enacted that in criminal cases of libel the jury may return a general verdict. (Taswell-Langmead, ch. 5.)

Q. What is meant by "the King's Peace"?

A. Under the Saxons, war was a normal condition; peace an exceptional condition. Thus the Saxon peace was divided into special peaces as to (1) place—churches, private houses, and the royal palace; (2) time—fasts, festivals,

* Howell's Case (1678) was an action arising out of Bushell's Case, in which it was first laid down that no action lies against a judge for wrongful acts done in his judicial capacity.

coronation days, days of public gemots and courts; and (3) persons—clergy, widows, nuns. After the Conquest, all these special protections were discontinued, and replaced by a general proclamation of the King's Peace, which was made each time that the community assented to the accession of a new King and continued in force during his reign. It was thus the duty of the King to preserve peace throughout the realm, crimes were breaches of his peace and punished by his courts in proceedings taken in his name. There was a technical interregnum in the King's Peace from the death of one King to the coronation of his successor. On the accession of Edward I., the Council proclaimed and enforced his peace though he was not crowned for two years. Edward II. reigned from the day after Edward I.'s death, so that practically the interregnum then ceased. (1 Stubbs, ch. 7; 1 Stephen's History, ch. 3; 2 Anson, 59, 60.)

Q. Give some account of the origins of the Common Law of England.

A. It was post-Norman. It meant the law administered in the King's Courts, as distinguished from the local customs administered by the Saxon Courts. It had its origin in the King's Justices, who decided each case on their own notions of equity, and referrred to the *curia regis* when in doubt. Custom was formed by practice; and the custom of the King's Court became the Common Law of the whole of England. (Deans, 24.) From Edward I. it was almost inflexible.

Q. What are the principal sources of our commercial law? What did Holt and Mansfield do for it?

A. The general mercantile usage of nations, gradually incorporated into and modified by the Common Law, the general English usage, and statute law. (Smith's Mercantile Law, Introduction.) Holt, C.J., settled the law of bills of lading and of bailment. Mansfield, C.J., incorporated the law merchant into the law of England; he laid down that the jury decide on the existence of a trade usage, and the

judge on its legal effect; and he built up the law of marine insurance. The principles of present-day mercantile law were practically settled before the reign of William IV. (Cf. Deans, ch. 6.)

Q. What changes were introduced by William the Conqueror into the system of Land Tenure in England?

A. Under the Saxons, land was indispensable to the position of a free man. The territory consisted of (*a*) Folkland, which belonged to the State and could only be alienated by the Witan for a definite time, and (*b*) Bocland, which was held by individuals, in absolute ownership, and acquired either as an original allotment on the Saxon Conquest or by a grant of folkland by charter from King and Witan. Prior to the Conquest, folkland had practically become Crown land (*terra regis*), and grants of it were made by the King in the presence of the Witan. The essence of Feudalism consists in (1) the personal relation of lord and vassal, founded on contract, binding the lord to give protection and the vassal to render services; and (2) the holding of the usufruct of land on condition of military service, while the ultimate ownership remains in the grantor. At the Conquest a great part of English land was held in feudal tenure; but the Government was not feudal. William gradually brought all English land under feudal tenure; but he carefully deviated from the continental feudal system, of exclusive dependence of and allegiance by a vassal to his immediate lord, by taking care that every landholder in the kingdom should take a direct oath of fealty to himself—which was carried out at the Council of Sarum in 1086. William also tried to prevent his barons becoming independent of the King, by scattering their manors all over the kingdom, instead of consolidating them into great local districts. Thus feudalism in England was never a system of Government, but only a land-holding system. (Taswell-Langmead, ch. 2; Hallam's Middle Ages, ch. 8; Stubbs, Vol I.; Digby, ch. 1.)

Q. What have been the principal forms of land tenure in England since the Conquest?

A. Feudal. These would be either lay or spiritual. The lay tenures were either free or base. The base tenures were villein socage and pure villeinage, which merged into the copyhold tenure of the present day. The free tenures were either military or civilian; the former comprised knight's service, in which the tenant had to follow the lord to war for 40 days yearly, grand serjeanty, and cornage—all turned into free and common socage by 12 Car. II., c. 24 (1660); the latter is free and common socage, *i.e.*, the freehold of the present day with varieties known as gavelkind, borough english, petit serjeanty, and ancient demesne. The spiritual tenures were frankalmoign and divine service; no frankalmoign tenure can be erected by a subject since *Quia emptores* (18 Edward I.) abolished subinfeudation in 1290, but the glebe land of ancient parish churches is still held by it; divine service was abolished by 12 Car. II., c. 24. The present tenures are therefore Freehold and Copyhold.

Q. State the circumstances which led up to, and the result that followed, the passing of the Statutes (1) Quia Emptores *and* (2) De Donis.

A. (1) By the feudal system in England a freeholder could grant away the fee simple (absolute ownership) in all or any part of the lands he held from the Crown, and the alienee would become *his* tenant. There was no limit on this right of underletting the fee simple. Thus between the Crown as lord paramount and the man in actual possession of the land there might be a large number of intervening (mesne) lords. One result was that the chief lord frequently lost such feudal rights as escheats, wardships and marriages. In 1290 *Quia emptores* confirmed the established right of every freeman to sell his fee simple lands at pleasure, but enacted that the purchaser should not hold from the vendor but should become tenant of the vendor's lord. Before the

Act, if A held land in knight service tenure from B and sold to C, A remained B's tenant and C became A's tenant. Since the Act, C becomes tenant to B in place of A. (2) Land could be granted to A or to A and his heirs; in the latter case A got a fee simple estate (which is the nearest thing to absolute ownership of land English law permits), while in the former case A only held for his own life. If land was granted to A and the heirs of his body, the law courts held that A could alienate a fee simple as soon as he had a child, and A's estate was called a fee simple conditional. The grantor evidently meant the land to be enjoyed only by A and his lineal descendants, and then to come back to himself. So *De Donis* enacted in 1285 that, on all grants to a person and the heirs of his body, the will of the donor should be observed according to the form of words in the deed of gift—the result was that the land was bound to go to the person's issue and on that becoming extinct to return to the donor. Ever after, a grant "to A and the heirs of his body" was called an *estate tail*; and this may also be created since the Conveyancing Act 1881 by a grant "to A in tail."

Q. Refer to Taltarum's Case. State how entails are barred.

A. Under Edward IV., in 1473, the law courts decided that the owner of an estate tail could turn it into a fee simple by a process called a Common Recovery: this prevented the land going to his issue and returning (on failure of issue) to the original donor; and allowed him to dispose of it absolutely, and failing that, made it devolve on his heirs generally, and failing heirs made it escheat to the Crown or other lord from whom it was held. Later on, by another process called a Fine, a tenant in tail was allowed to turn his estate tail into a base fee; this prevented the land going to his issue but did not prevent it returning to the original donor on failure of issue. The Fines and Recoveries Act 1833 now allows a tenant in tail to bar his estate tail and change it into a fee simple or (sometimes) a base fee by a

simple deed enrolled within six months in the High Court of Justice.

Q. Explain the object of the Statute of Uses, and state how far that object was attained.

A. The object was to do away with Uses, by means of which the person who was the owner of land by the rules of Common Law was often held by Chancery to be simply a trustee bound to account for the profits of the land to another person. The Use or beneficial interest could be disposed of by secret deed, could be willed, and was not liable to curtesy, dower, debts, or escheat; in each of which points it originally differed from the seisin or legal ownership. The Statute (27 Henry VIII., c. 10) recites these points as grievances, and enacts that whenever one person is seised of land to the use (or confidence or trust) of another, that other shall be deemed in possession as legal owner for the same interest as he had before in the use. Before the Act, if freeholds were conveyed to A to use of B, A was the owner at Common Law but B had the beneficial interest; since the Act, A gets nothing but B has the legal as well as the beneficial ownership. The Statute was held by the courts of law not to apply (1) to a use upon a use (Tyrrell's Case), so that if freeholds are conveyed to A to use of B in trust for C, the owner of the first use (B) must have the legal estate, nor (2) to a case where the person seised had any active duty to perform (Barker v. Greenwood) so that if freeholds are conveyed to X in trust to pay the rents to Y, X must have the legal estate. Then the Court of Chancery stepped in and held that B and X were trustees for C and Y respectively; and since then the legal ownership of B and X is called the use, while the beneficial interest of C and Y is called the trust.

Q. Explain the methods of trial by Wager of Battel and Wager of Law. How were they superseded?

A. (1) *Wager of Battel* was introduced by William I.

It was used in civil actions, trials in the Court of Chivalry, and appeals of felony. In civil actions, the combat was fought by champions, for fear lest one of the parties should be killed and the suit ended. In military cases, the combat was between the disputants, was regulated by the constable and marshal, and ended in the death of one party. In murder and manslaughter, a blood relation of the deceased could bring an "appeal of felony" against the slayer, who could then claim "Wager of Battel" unless the accuser was a female, priest, infant, over 60, lame, or blind; the accused pleaded not guilty and threw down a glove which the accuser took up; a solemn oath was taken before the fight; if the accused was vanquished, he was hanged; if the accused killed his accuser or continued to fight from sunrise to sunset, he was acquitted from the appeal, but then tried as if indicted. After 1786, the trial on indictment preceded the appeal. The last case was Ashford v. Thornton in 1818, when Thornton claimed the wager, but was discharged as the appellant did not accept the challenge. This wager was abolished in 1819. (2) *Wager of Law* was simply the Saxon mode of compurgation; it consisted in the accused bringing forward 12 of his relations and neighbours (freemen) to swear they believed in his trustworthiness; the compurgators were really witnesses to character, who backed up the accused's oath of innocence. It received its death blow in criminal cases from the jury system established by Henry II., but lingered on in actions for debt (the last example being King v. Williams in 1824, 2 B. & C., 538) until abolished by 3 & 4 Wm. IV., c. 42.

Q. What was the great reform introduced under Henry II. by the Grand Assize? Give a short history of the Action of Ejectment.

A. That a freeholder, instead of having to defend the *title* to his land by the doubtful issue of trial by battle, might choose to depend on the recognition (knowledge) of a

jury of 12 sworn knights of the locality, who were chosen before the judge by 4 knights summoned by the sheriff. (Taswell-Langmead, 137.) Originally, possession of land was recovered by a real action (droitural or possessory); the proceedings were long and intricate; if the plaintiff by any accident failed, he could not bring another action; and the action was in the Common Pleas only. Hence, under Henry VIII., a personal action was adapted; this was trespass *de ejectione firmæ*, brought by a lessee for years who had been ousted, and in which the Court awarded damages for the ouster and ordered restitution of the land; and in all cases where a plaintiff had a right of entry, the fiction was adopted of suing in the name of a third party who pretended he was the claimant's lessee and had been ousted by the defendant. Thus in the 18th century the action was based on the fiction of a demise by the real claimant to a fictitious lessee (John Doe) and a fiction of a trespass committed by a fictitious casual ejector (Richard Roe), and the real occupant was obliged to admit these fictions in order to defend his title. In 1833 real actions were abolished, and the action of ejectment could always be used. The Common Law Procedure Act 1852 abolished the use of fictitious allegations in actions of ejectment. Now, under the Judicature Acts, the action is begun by a writ of summons indorsed with a claim for recovery of the land, and follows the same course as an ordinary action, but the judgment is enforced by a writ of possession. (Stephen's Commentaries, Vol. III.)

Q. What were the Petty Assizes?

A. (1) The most important was the Assize of Novel Disseisin. It dates from 1166; it protected the possession of freeholds, as distinct from the ownership, and it was done by the King irrespective of what lord the possessor held from; a royal writ commanded a jury to try whether the plaintiff had been wrongfully disseised. (2) Assize of Mort d'ancestor (1176), to enquire whether A died seised and whether B is A's

heir; and, if so, to put B in possession. (3) Assize of darrein presentment (1164), to try by jury in the King's court who last presented to a church living, and to let him present again on the next vacancy. (4) Assize utrum (1164), to try by jury in the King's court if land belonged to the church under an alms' gift, in which case litigation about the land went to the ecclesiastical courts. All the petty assizes were formed of 12 lawful freemen summoned directly by the sheriff. (Carter, 40, 191.)

Q. What is the history of the Action of Assumpsit?

A. In the 13th and 14th centuries, the only actions on Contracts were: (1) Covenant, for breach of a promise under seal; (2) Debt, for a liquidated sum due; and (3) Detinue, for the recovery of a specific chattel bailed to the defendant. There was no remedy for breach of an executory simple contract. The remedy was found in a form of the action of trespass on the case, brought for the indirect consequences of a wrongful act. This lay originally for a malfeasance, *i.e.*, doing an act wrongful in itself; next it was applied to misfeasance, *i.e.*, improperly doing a rightful act, and in this form it applied to promises part performed and then abandoned or negligently executed; finally, it was applied to nonfeasance, *i.e.*, omission to do what one was bound to do. This third form was adapted to executory simple contracts. Under Henry IV. an action was brought against a carpenter *quare assumpsisset* to build a house and had made default, but the judges dismissed the action, as the promise was not under seal. But early in the 16th century it was settled that the form of trespass on the case, known ever since as the action of assumpsit, would lie to recover damages for breach of an executory simple contract. (Anson's Contracts, 45.)

Q. What is the history of the action of Trover?

A. Originally it lay only for recovery of damages against such person as had *found* another's goods and converted

them to his own use. If a person got lawful possession of specific goods belonging to another, but unjustly detained them, an action of Detinue was brought to recover the goods or (at the defendant's option) their value, and damages for the detention; but it was subject to Wager of Law. Trover was free from Wager of Law, and (by a legal fiction) was ultimately allowed to be brought against anyone who by any means got possession of another's chattels, and sold or used them without the owner's consent or refused to deliver them on demand. The fiction was an allegation in the pleadings that plaintiff had lost the goods and defendant had found them; this purely formal and fictitious allegation was discontinued by the Common Law Procedure Act 1852. Since 1852, the plaintiff simply proves that certain goods are his, that they came to defendant's possession, and that defendant did not give them up on demand. (Stephen's Commentaries, Vol. III.)

Q. Give a short history of indictments.

A. The indictment was at first an oral presentment on oath made by men of the locality to the sheriff or judge, that they believed a certain person was guilty of a crime. Under Henry II. this had to be done by at least 12 lawful men (grand jury of accusation). Under Edward I. all indictments were put into writing. By 25 Edward III., c. 3, the indictment must charge a specific crime. By 4-George II., c. 26, indictments are to be in English instead of Latin. They are now used to try treason, felony, and misdemeanour at Assizes or Quarter Sessions.

Q. What do you know about (1) *Justices of the Peace;* (2) *Quarter Sessions, and* (3) *Coroners?*

A. (1) Edward III. appointed them in each county to keep the peace. They are now appointed by the Lord Chancellor. By statute law, they can hold inquiries under the Indictable Offences Act 1848, and commit for trial on indictment at Quarter Sessions or Assizes; they can under some statutes

try crimes without a jury; and they have a large statutory miscellaneous jurisdiction. (2) A criminal court in each county formed by a statute of Edward III.; it sits four times a year to try indictments; and is forbidden by an Act of 1842 to try treason, murder, and felony (other than burglary) punishable with penal servitude for life. In county quarter sessions, the justices of the peace are judges and act by a chairman. Many boroughs have quarter sessions, presided over by a Recorder who must be a barrister. (3) His duty is to enquire into suspicious deaths and treasure trove, and anyone can be tried at Assizes for murder or manslaughter on the inquisition of his jury.

Q. Explain the terms (*a*) *Guild Merchant*, (*b*) *General Custom*, (*c*) *Deodand, and* (*d*) *Benefit of Clergy.*

A. (*a*) This was an association formed by traders within a town, and sometimes by traders living outside its precincts, for the better management of trade. The guild sometimes acted as arbitrator in mercantile disputes, but as a rule did not exercise a regular jurisdiction, its chief function being that of a trades union of a rigidly protective character, as only members of it could trade freely within the town. (*b*) General customs are the universal rule of the whole kingdom and form the Common Law, *e.g.*, that the eldest son alone is heir to his ancestor, as opposed to particular customs which affect only the inhabitants of particular districts, *e.g.*, the custom of gavelkind obtaining in Kent. (*c*) This was any personal chattel which was the immediate occasion of the death of any reasonable creature, such chattel being formerly forfeited to the king to be applied to pious uses and distributed in alms by his high almoner, though anciently it was destined to a more superstitious purpose. Deodands were abolished in 1846. (*d*) The privilege allowed to a clerk in holy orders when prosecuted in the temporal court, of being discharged therefrom, and handed over to the spiritual court to make canonical purgation, *i.e.*, to clear himself on

his own oath and that of 12 persons as his compurgators. It applied only in capital felonies, and was abolished in 1827.

Q. Give an outline of the history of the Navigation Laws.

A. Until 1825 the primary statutory enactment was the Navigation Act 1660 (12 Car. II., c. 18), the provisions of which had in a rudimentary form been framed in the time of the Long Parliament for the purpose of stopping, or at any rate crippling, the trade carried on by our own sugar islands with the Dutch. All ships of foreign nationality were prohibited from trading with England and any English plantation without a State licence—the real object being to encourage British shipping. The Navigation Acts were revised under Geo. IV., and afterwards amended by William IV. and Victoria. But in 1849 an era of free trade was introduced, and the old restrictions now only apply to the trade from one part to another of any British possessions in Asia, Africa, and America. But there is still power to make orders in Council to impose prohibitions, restrictions, and duties on vessels of any country which does not treat England on the basis of the most favoured nation.

Q. Indicate to what extent (1) *the Jew* (2) *the Clerk were exempt from the ordinary law down to the period of Edward I.*

A. (1) The Jew was considered an alien, and accordingly political rights were denied him. No estate of inheritance in land could be held by him, and even his residence here was merely on sufferance. He was not permitted to swear on the Pentateuch except in judicial proceedings, and accordingly was a hereditary alien, being unable to do homage or fealty. He could neither be lord or vassal, and was merely the king's chattel. The Jew was in law regarded as treasure trove, and his position is clearly defined in one of the ordinances of King Edward as follows :—" Be it known that all Jews whatsoever they may be in the realm are of right under the tutelage and protection of the King, nor is it lawful for any of them to

subject himself to any wealthy person without the King's licence. Jews and all their effects are the King's property, and if anyone withhold their money from them let the King recover it as his own." Process (*i.e.*, the King's writ) did not run in Jewry except between Christians and Jews or in Pleas of the Crown; cases between Jews were determined by their own tribunals and settled according to their own law. Under King John's Charter of 1201 Jews were enabled to travel and settle as they pleased, could purchase freely and sell their securities after possession for a year and a day, were free of tolls and subject only to the jurisdiction of the King and his Castellans, and they could claim to be tried by their peers and to be sworn on the Pentateuch. 2) The clerk, unlike the Jew, was under the powerful protection of the Catholic Church. He was exempt from the Common Law of the land and subject primarily to the Canon Law. His proper Court was the Court of the Bishop or Consistory Court. A clerk accused of felony was tried before the bishop and a jury of 12 clerks; and if the prisoner and 12 compurgators swore to his innocence, he was acquitted; otherwise he could be degraded, whipped, or imprisoned. (Carter, ch. 25.)

Q. Give some account of the history of the will of personalty.

A. In early times the power of testamentary disposition of personalty seems to have been a matter of very gradual and imperceptible growth. The exact period when the binding character of such a will was recognized is very doubtful. Glanville (in Henry II.'s time) says a deceased's goods were to be divided into three equal parts. One went to his lineal descendants, another to his wife, and the other third only could be disposed of by will. If he had not a wife, then he could dispose by will of one-half, the other half going to his children; and so *e converso*, if no children, the wife took one-half and he might bequeath the other; and if he had neither wife nor children, he might bequeath all

his personalty. Local custom, however, created many exceptions to this general rule, and in anything like modern times the law, stated by Glanville, was extant only in York, Wales and London. And as to these places statutes were passed assimilating the law to that prevailing generally. The formalities required for a will of personalty were looser than those in respect of realty. A nuncupative (verbal) will was valid if duly proved by witnesses until certain restrictions were placed upon this by the Statute of Frauds (29 Car. II., c. 3). Even then, so long as the will was in writing, it required no signature or witnesses. Under the Wills Act 1837 wills of personalty and wills of realty are placed upon the same footing and require to be in writing, signed at the foot or end thereof by the testator, or acknowledged by him, in the presence of two witnesses who must attest in his presence. From early times probate of a will of personalty has been necessary to make a title to the deceased's personal estate; this was formerly obtained from the ecclesiastical courts, but since 1857 from the Probate Court, which is a now a Division of the High Court of Justice.

Q. Give some explanation of the origin of the present doctrine of Consideration in respect of Contracts.

A. Offer and acceptance only bring the contracting parties together. Form or consideration supports and substantiates the promise made. It is difficult to define how and where consideration came to be regarded as the basis upon which rests the validity of informal promises, *i.e.*, contracts not under seal. The rule is, and has long been, that a simple contract, *i.e.*, one by word of mouth, conduct, or in mere writing not under seal, must have a valuable as opposed to good consideration to support it, the maxim being *Ex nudo pacto non oritur actio*, and probably the *quid pro quo*, which furnished the ground of the action of debt and the detriment to the promisee on which was based the

action of assumpsit, were both merged in the more general conception of consideration as developed by the Court of Chancery.

Q. Under what conditions may A arrest B without a warrant? Does it make any difference that A is a police constable?

A. (1) If A is present when B commits a felony or dangerous wound or breach of the peace. (2) In aid of a police officer in execution of his duty who requires help in effecting an arrest or suppressing an affray; and in this case A would be guilty of a Common Law misdemeanour unless he renders the desired assistance. (3) If A finds anyone committing (these words are construed strictly, R. v. Phelps, C. & M., 180) an indictable offence by night, or any offence under the Larceny Act (except angling in the daytime), or under the Coinage or Vagrancy Act. (4) If property is offered to him for sale or pledge which he reasonably suspects has been stolen. (5) On reasonable suspicion of a felony, subject to an action for false imprisonment if no felony has been committed, and there was no reasonable suspicion; and (6) Upon hue and cry. A constable may arrest without warrant (1) for treason or felony, or breach of the peace committed in his presence, (2) on reasonable suspicion of felony, (3) on a reasonable charge of felony, (4) persons loitering by night and suspected of felony (actually committed or intended) under the Larceny or Malicious Damage or Offences against Persons Act 1861, (5) suspicious loiterers by night in the Metropolitan Police District, (6) anyone found committing a street offence under the Metropolitan Police Act 1839, or the Town Police Clauses Act 1847, and (7) under a number of special statutes.

Q. What is the history of Benefit of Clergy?

A. In the 12th century the Church claimed that a clerk accused of felony was subject to ecclesiastical courts only. By the Constitutions of Clarendon in 1164 the clerk was to be accused before the temporal court, and on pleading his

clergy was sent for trial to the ecclesiastical court, attended by a royal officer, and if degraded by the ecclesiastical court was brought back to the temporal court to receive the layman's punishment. After Becket's murder, the temporal court continued to bring the felonious clerk before it, but abandoned its claim to punish the degraded clerk; and hence arose benefit of clergy. Under Edward IV. anybody who could read the first verse of the 51st Psalm could claim benefit of clergy, *i.e.*, exemption from punishment for felony in the temporal court. In 1487 a statute laid down that a layman could only claim benefit of clergy once, and should be branded. At length statute law took away the privilege in specified felonies, and it was finally abolished in 1827.

Q. Are there any instances in our legal history which support the view that jurisdiction is founded on consent?

A. The only instance is found in the jurisdiction possessed by the Manor Court which existed to some extent at the time of the Conquest. No trace of an express grant of jurisdiction to the lord sitting in his Court of the Manor can, however, be found. Possibly it only required the consent of the parties before it to invest the Manorial Court with the powers possessed by the Hundred Court. The Manor Court came to be regarded as a private or proprietory Hundred Court. It (1) administered the law of the Hundred, (2) observed the procedure of the Hundred, and (3) like the Hundred Court, it was controlled by the Shire Court. (Carter, 24.)

Q. Explain on technical grounds the expression "High Court of Parliament."

A. Originally the High Court of Parliament cannot be considered to have been higher than or distinguishable from the King's Bench. It was really a King's Bench assistant, and this appears plainly from the fact that a plea could be freely adjourned from Parliament to King's Bench or *vice versa*. Presently it became settled that the highest court of

ordinary jurisdiction should be the King in Parliament, and in Edward I.'s reign the administration of the Common Law took the form which it retained until the Judicature Act 1873. (Carter, 96.)

XII.—Miscellaneous.

Q. What are the provisions of Magna Charta with regard to (1) *the Church*, (2) *Law and Justice*, (3) *Taxation?*

A. (1) The Church of England shall be free, with all her rights and liberties inviolate (c. 1). (2) Common Pleas shall not follow the King's person but be held in one fixed place (c. 17); assizes of novel disseisin, mort d'ancestor, and darrein presentment shall be held locally, four times a year in each county before two justices with four knights chosen by the County Court (c. 18, 19); fines shall be proportionate to the offence, and assessed by the oaths of honest neighbours, and shall not extend to the freeman's contenement, the merchant's wares, and the villein's agricultural implements (c. 20, 21, 22); pleas of the Crown shall not be held by a sheriff, constable, coroner, or King's bailiff (c. 24); the writ of præcipe shall not issue to call up a cause into the King's Court so as to oust the local courts of their jurisdiction (c. 34); the writ of inquest of life or limb shall be issued gratis and of right, so as to prevent long imprisonment without bail before trial (c. 36); no one shall be brought to trial on the bare word of a bailiff without credible witnesses (c. 38); no freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or exiled, or in any way injured, except by the lawful judgment of his equals or the law of the land (c. 39); to no one will we sell, or deny, or delay justice (c. 40); freedom of entering and leaving the kingdom allowed, except during war (c. 41, 42); persons living outside a forest not to be summoned to the forest court except for

breach of forest law (c. 44) ; justices to be skilled in the law (c. 45) ; a woman can only bring appeal of felony for her husband's death (c. 54). (3) No scutage or aid, save the three accustomed aids, to be taken save *per commune concilium regni*. (Taswell-Langmead, ch. 4.)

Q. Give some account of the Constitutions of Clarendon.

A. They were issued under Henry II. in 1164 and annulled after Becket's death in 1170. The object was to check the powers of the Pope and the clergy. Disputes as to advowsons were to be settled in the King's Court. Clergy accused of crime were to be brought before the King's Court to decide whether it would try them or hand them over to the Spiritual Court. No clergy to leave the realm without the royal licence. If none would accuse a powerful layman, amenable to the bishop for crime, the sheriff is to swear 12 lawful men to give testimony according to their conscience. Disputes between clergy and laity as to tenure of land were to be decided by the chief justice on the recognition of 12 lawful men. Appeals should lie from the archdeacon to the bishop, thence to the archbishop, and finally to the King. All pleas of debt to be decided in the King's Court.

Q. Describe the events which led up to the Confirmatio Chartarum. *What were the provisions of that statute?*

A. The extensive wars of Edward I. needed large sums of money, which he raised by arbitrary taxation on the clergy and laity; provisions were arbitrarily levied from each county; the King refused to confirm Magna Charta, and the Charta de Forestâ, and openly disregarded both; foreign service was demanded from the barons ; an illegal tax was demanded —of an eighth from knights, a fifth from the towns, and a third from the clergy. A Remonstrance was then presented to the King, setting out the above grievances, and the barons extorted the Statute called *Confirmatio Chartarum* in 1297. The Statute enacted (1) that Magna Charta and the Charter

of the Forest should be observed in every point and published throughout the realm with the Confirmation; (2) all judgments contrary to these Charters should be void; (3) copies of the Charters should be kept in the cathedrals, and read twice a year publicly; (4) all infringing the Charters should be excommunicated; (5) the aids, tasks, and prizes taken previously by the King should not be precedents; (6) no aids, tasks, and prizes should be taken in future without the common assent of all the realm, and for the common profit, except the ancient aids; (7) the maltolte or toll of forty shillings on each sack of wool and other like tolls should not be levied without the common assent of the realm, saving the customs of wools, skins and leather already granted by the said commonalty. (Taswell-Langmead, ch. 7.)

Q. What were the causes and the chief results of the Peasant Revolt in 1381?

A. (1) The Introduction of Leases. The lord of a manor found it more profitable to farm out the demesne, for a fixed rent in money or kind, than to cultivate them by a bailiff. This indirectly broke into the feudal tie of the tenant's personal dependence on his lord, and caused the rise of the Farmer Class intermediate between the larger landed proprietors and the customary tenants. (2) The rise of the Free Labourer. Originally, labour was strictly bound to the soil; no villein or serf could choose his master or occupation; each was born to his holding and his lord. But labour became free (*a*) by flight to, and residence in, a chartered town for a year and a day, or (*b*) by a commutation of services for a money payment. (3) The Black Death, in 1349, swept away half the population of England; labourers became very scarce; free labourers demanded high wages, which disturbed all industrial employments and originated the strife between capital and labour. (4) The Statute of Labourers (1351) compelled all unoccupied and landless persons under 60 to serve any employer who required it

for wages at the rate paid two years before the plague, under pain of imprisonment, and forbade the labourer to quit the parish where he lived in order to seek better paid employment on pain of outlawry. (5) An agitation against the social inequalities of the time was begun by John Ball, whose quaint rhymes started the literature of political controversy. The revolt of 1381 was put down with a stern hand—over 7,000 of the rebels were killed. The Statutes of Labourers were then more rigorously enforced, the children of labourers were forbidden to be sent to school or apprenticed, villenage rapidly died out, and the agricultural system was revolutionized, for the small allotments were massed into large holdings for sheep farming which required fewer hands than tillage. (Green's Short History, ch. 5.)

Q. Specify some of the chief Saxon laws.

A. (1) The constitution of Parliament, the Witanagemot. (2) Election of all magistrates. (3) Hereditary descent of the Crown. (4) Scarcity of capital punishment, and frequency of fines. (5) Forfeiture for treason. (6) Gavelkind instead of primogeniture among males. (7) Blending of Civil and Ecclesiastical Jurisdictions in one Court, usually the Sheriff's Court. (8) Trial by ordeal, by corsned, or by wager of law with compurgators. (4 Stephen's Commentaries.)

Q. What direct changes in law resulted from the Norman Conquest?

A. (1) Separation of Ecclesiastical and Civil Courts. (2) Introduction of forest laws. (3) Establishment of the *Aula Regis* with original jurisdiction over the whole realm. (4) Legal proceedings conducted in French. (5) Introduction of trial by combat. (6) Feudal tenure of land established. (4 Stephen's Commentaries.)

Q. What were (1) *the Constitutional results*, (2) *the chief legal reforms, in the reign of Henry II.?*

A. (1) Development of the Kingship as a feudal and national monarchy, in spite of the opposition of the feudal

barons; and maintenance of the legal supremacy of the State over the National Church, against the clergy, who had obtained a dangerous immunity from ordinary legal process by their system of separate courts. (Taswell-Langmead, 75.) (2) The Constitutions of Clarendon, 1164 (annulled 1170), checking the powers of the Pope and clergy; institution of justices in *eyre*; introduction of the grand assize to try a writ of right in lieu of ordeal by combat; establishment of recognition by sworn inquest (the parent of trial by jury); taxation of personal property by the Saladin Tithe; and introduction of escuage in lieu of personal military service, which gradually led up to subsidies and to land tax. (4 Stephen's Commentaries.)

Q. What were the chief legal alterations under Edward I.?

A. (1) The *Confirmatio Chartarum*. (2) Definite bounds set to Ecclesiastical jurisdiction. (3) The Ordinary was bound to discharge an intestate's debts, so far as the assets extended. (4) The jurisdictions of all the superior and inferior courts were definitely settled. (5) Establishment of a Public Record Office. (6) Creation of estates tail by *De Donis*. (7) Abolition of subinfeudation of the fee simple by *Quia Emptores*. (8) Writ of *elegit* introduced, to obtain execution against land. (9) Repeated Mortmain Acts passed. (10) The Statute *in consimili casu*. (11) The model Parliament. (4 Stephen's Commentaries.) Edward has been called the English Justinian, but the description is not apt, for Justinian codified existing law while Edward made great improvements and alterations both in substantive and adjective law.

Q. Describe any changes in the laws under Henry VIII.

A. (1) The Reformation. (2) The Statute of Wills, permitting a written will of two-thirds of lands held in military tenure and all socage land. (3) The Statute of Uses. (4) Introduction of the Law of Bankruptcy. (5) Union of Wales with England. (6) Act for Royal Proclamations to

have the force of statutes. (7) Extension of the Law of Treason. (8) A Regency Act on which Henry acted. (4 Stephen's Commentaries.)

Q. Name some of the beneficial statutes passed in the reign of Charles II.

A. The Act for the abolition of military tenures. The Habeas Corpus Act 1679, to provide for the certain issue of the writ in cases of detention for alleged crime. An Act for Triennial Parliaments. The Statute of Frauds. The Statute for the Distribution of the Personal Estates of Intestates.

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